IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.101 OF 2014

DISTRICT : MUMBAI

Shri Ramchandra Soma Mahale.)
Residing at Apurva Colony, Shivaramnagar,)
Takali Road, Nashik.)**...Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Finance Department, Mantralaya,)
Mumbai.)

2. The Director of Accounts & Treasury.)
Barrack No.6, Free Press Journal Marg,)
Mumbai – 400 021.)**…Respondents**

Mr. J.N. Kamble, Advocate for Applicant.

Ms. S.P. Manchekar, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 24.04.2019

JUDGMENT

1. In the present Original Application, the Applicant has challenged the order of punishment imposed in Departmental Enquiry (E.O.) against him by the order of disciplinary authority dated 16.03.2012, which has been confirmed by

Appellate Authority on 05.06.2013 invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this application are as under :-

The Applicant was appointed as Accounts Officer in the Office of Director of Accounts and Treasury, Mumbai. Thereafter, he was posted as Treasury Officer, Dhule on 22.09.1987. The Respondent No.1 had initiated D.E. against the Applicant under Rule 8 of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (hereinafter referred to 'Rules of 1979') for grave misconduct in passing of the bills of Zilla Parishad, Minor Irrigation Department, Dhule within the period from 22.09.1987 to 24.10.1991. The charge-sheet was issued on 18.09.1995 whereby six charges were framed against the Applicant. On 13.11.1995, the Applicant submitted his reply to the charge-sheet. The Enquiry Officer (E.O.) was appointed to contemplate D.E. and it was prolonged for a long time. Ultimately, the E.O. submitted the report on 04.02.2010 to Respondent No.1 holding the Applicant guilty for Charge Nos.1 and 2. Charge Nos.3, 4 and 6 held partly proved and Charge No.5 held not proved. The Respondent No.1 disagreed with the finding recorded by E.O. in respect of Charge Nos.3 and 4 and recorded tentative finding that, all charges except Charge No.4 are proved. Accordingly, show cause notice was given to the Applicant on 09.05.2011 as to why the punishment should not be imposed upon him. On 09.06.2011, the Applicant submitted reply to show cause notice disputing the correctness of the finding. However, the Respondent No.1 by order dated 16.03.2012 imposed the punishment of reduction in pay scale for three years with stoppage of increment for three years with cumulative effect under Rule 5(iv) of 'Rules of 1979'. Being aggrieved by it, the Applicant preferred an appeal on 25.04.2012 before the Hon'ble Governor. The said appeal was dismissed on 05.06.2013. The Applicant has, therefore,

approached this Tribunal challenging the order of punishment dated 16.03.2012 as well as order of Appellate Authority dismissing the appeal dated 05.06.2013.

3. Earlier, this O.A. was heard and decided by this Tribunal on 09.07.2014 and O.A. was allowed. Being aggrieved by it, the Respondent No.1 challenged the said order in Writ Petition No.6175/2015 before the Hon'ble High Court. The Hon'ble High Court by order dated 13th March, 2018 set aside the order passed by this Tribunal dated 9th July, 2014 and remanded the matter to the Tribunal for disposal afresh. The Hon'ble High Court directed for fresh disposal of O.A. on merit in view of the decisions of Hon'ble Supreme Court in ***(2013) 6 SCC 515 (Anant Kulkarni Vs. Y.P. Education Society and Ors.)*** and ***(2015) 2 SCC 610 (Union of India and Ors. Vs. P. Gunasekaran)*** and the observation made in the Judgment.

4. It is on the background, the O.A. has now being decided afresh.

5. Shri J.N. Kamble, learned Advocate for the Applicant had submitted written notes of arguments. Ms. S.P. Manchekar, learned Chief Presenting Officer also filed written notes of arguments and placed reliance on the Judgment in ***P. Gunasekaran's*** case and ***Anant Kulkarni's*** case (cited supra).

6. At this juncture, before adverting to the written notes of arguments filed by the learned Counsels, it would be apposite to reproduce relevant Paragraphs from the Judgment of Hon'ble High Court in Writ Petition No.6175/2015, which are as follows :

> "***11.*** *Again, we find that there is no clarity in the impugned judgment and order as regards the weight which the MAT has assigned to the aspect of delay in initiation and conclusion of the departmental proceedings. However, it is quite clear that the MAT, has not even adverted to the principles laid down by the Hon'ble Supreme Court in the case of Anant R. Kulkarni (supra). For this reason*

also, interference with the impugned judgment and order made by the MAT is warranted.

12. *Mr. Kamble has however submitted that the respondent must be given an opportunity to demonstrate that the findings recorded by the enquiry officer or accepted by the disciplinary authority suffer from perversity. He submits that the respondent must also be given an opportunity to establish that the delay in the conclusion of enquiry proceedings has indeed occasioned very serious prejudice to the respondent.*

13. *Ordinarily, in a matter of this nature, we would have disposed of the petition by setting aside the impugned judgment and order made by the MAT since, the approach of the MAT, was not consistent with the law laid down by the Hon'ble Supreme Court in P. Gunasekaran (supra) and Anant Kulkarni (supra). However, we agree with Mr. Kamble that this is a fit case where the respondent must be granted an opportunity to demonstrate that the order impugned by the respondent before the MAT warrants interference even going by the restrictive parameters of judicial review explained in P. Gunasekaran (supra) or the principles of interference with departmental proceedings on grounds of delay as set out in Anant Kulkarni (supra). Therefore, although, we propose to set aside the impugned judgment and order made by the MAT, we are of the opinion that the interests of justice will be met, if the matter is remanded to the MAT for fresh decision in accordance with law and on its own merits.*

14. *Accordingly, we set aside the impugned judgment and order dated 9th July 2014 made by the MAT, but remand the matter to MAT for fresh disposal of OA No. 101 of 2014 in accordance with law and on its own merits by adhering to the principles laid down by the Hon'ble Supreme Court in cases of P. Gunasekaran (supra) and Anant Kulkarni (supra) in the matters of judicial review of the findings recorded by inquiry authorities/disciplinary authorities and the issue of delay in institution or conclusion of disciplinary proceedings."*

7. At this juncture itself, it would be useful to see the legal principles enunciated by Hon'ble Apex Court in ***P. Gunasekaran's*** case. The Hon'ble Supreme Court in the context of exercise of powers under Articles 226 and 227 by the Hon'ble High Court in relation to disciplinary proceeding has held that the Hon'ble High Court or tribunal is not and cannot act as a second Court of Appeal and adequacy as well as reliability of evidence cannot be looked into in judicial review. It has been further held that, it is not permissible to re-appreciate the evidence laid before the E.O. in order to reach to a different finding and

interference is permitted only when the finding of fact is perverse. Needless to mention that the parameters laid down by Hon'ble Supreme Court would also apply to the Tribunal established under Administrative Tribunals Act exercising the powers of judicial review. The Hon'ble Supreme Court laid down the parameters as under :-

> "The High Court can only see whether:
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> (a) the enquiry is held by a competent authority;
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> (b) the enquiry is held according to the procedure prescribed in that behalf;
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> (c) there is violation of the principles of natural justice in conducting the proceedings;
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> (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
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> (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
>
> (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
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> (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;
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> (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
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> (i) the finding of fact is based on no evidence."

8. Further, the Hon'ble Supreme Court in Para No.13 of the Judgment held as follows :

> "**13. Under Article 226/227 of the Constitution of India, the High Court shall not:**
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> (j) re-appreciate the evidence;
>
> (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
>
> (iii) go into the adequacy of the evidence;
>
> (iv) go into the reliability of the evidence;
>
> (v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;
(vii) go into the proportionality of punishment unless it shocks its conscience."

9. In ***Anant Kulkarni's*** case (cited supra), the Hon'ble Supreme Court has held that the Tribunal should not generally set aside the finding recorded in D.E. on the ground of delay in initiation of disciplinary proceeding, as such power dehors the limits of judicial review. The Tribunal has to consider the seriousness and magnitude of the charges and while doing so, the Tribunal must weigh all the facts, both for and against the delinquent officers and come to the conclusion, which shall be just and proper in the fact situation. It has been further held by Hon'ble Supreme Court that the Tribunal has to balance and weigh the circumstances, so as to determine, if it is in the interest of clean and honest administration that the said proceedings are allowed to be terminated only on the ground of a delay in the conclusion of D.E.

10. Shri J.N. Kamble, learned Advocate for the Applicant in written notes of arguments referred to certain decisions of Hon'ble High Court and Hon'ble Supreme Court on the point of delay in conclusion of departmental proceedings and sought to contend that, in view of inordinate delay in completion of D.E, serious prejudice has been caused to the Applicant and on that ground itself, the finding recorded by the disciplinary authority needs to be quashed. He referred to the following decisions :

(a) ***(2008) 4 Bom.C.R.470, DB-2008 (2) Mh.L.J. 448 (Balkrishna Namdeo Katkade Vs. State of Maharashtra)*** wherein it is observed as under :

"Inordinate and unexplained delay in serving the charge sheet upon the delinquent officer is relevant factor but it is not an absolute proposition of law, that in every case of delay the charge sheet should be essentially be

quashed by the court. If charge sheet is served after prolonged delay and serious prejudice is caused to the delinquent officer during the course of the departmental proceedings resulting from such delay the court may quash the charge sheet, provided the articles of charges are not of very grace nature."

(b) The Judgment of Hon'ble Supreme Court in ***(1998) 4 SCC 154 (State of A.P. Vs. N. Radhakishan)*** wherein it has been observed in Para 19 as follows:

*"**19.** It is not possible to lay down any pre-determined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated, each case has to be examined on the facts and each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him arc concluded expeditiously and he is not made to undergo mental agony and also monetary loss' when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether delay has vitiated the disciplinary proceedings the Court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained, prejudice to the delinquent employee is writ large 'on the face of it. It could also be seen as to how much disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he has to suffer penalty prescribed. Normally, disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeats justice. Delay courses prejudice to the charged officer unless it can be shown that he is to or when there is proper explanation for the delay in conductingthe disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations."*

(c) The Judgment of Hon'ble Supreme Court in ***(2005) 6 SCC 636 (P.V. Mahadevan Vs. M.D.T.N. Housing Board)*** wherein it was observed in Para 11 as follows :

"**11.** *Under the circumstances, we are of the opinion that allowing the Respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant.. Keeping a higher government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public. interest and also in the interest of inspiring confidence in the minds of the Government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.*"

(d) The Judgment of Hon'ble Supreme Court in ***State of Madhya Pradesh Vs. Bani Singh & Anr. AIR 1990 SC 1308*** wherein it was observed in Para 4 as follows :

*"**4.** The appeal against the order dated 16.12.1987 has been filed on the ground that the Tribunal should not have quashed the proceedings merely on the ground of delay and laches and should have allowed the enquiry to go on to decide the matter on merits. We are unable to agree with this contention of the learned counsel. The irregularities which were the subject-matter of the enquiry is said to have taken place between the years 1975-1977. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April, 1977 there was doubt about the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to*

permit the departmental enquiry to be proceeded with at this stage. In any case there are no grounds to interfere with the Tribunal's orders and accordingly we dismiss this appeal."

11. Bearing in mind the aforesaid legal principles and the limitations of judicial review, now let us see the charges framed against the Applicant, which are as follows :

"**बाब क्रमांक : १ -**

श्री. रा. सो. महाले हे कोषागार अधिकारी, धुळे या पदावर दिनांक २२.९.१९८७ ते २४.१०.१९९१ या कालावधीत कार्यरत असताना, जिल्हा परिषद लघु सिंचन विभाग, धुळे यांनी कोषागारात सादर केलेल्या अनुदानाच्या देयकातील मागणीच्या पृष्टयर्थ शासन ग्राम विकास विभागाचे कोषागारातून अनुदान काढण्याचे मंजूरी आदेश नसताना, सुमारे रुपये ३७ लाखांची देयके पारित केली. या अनियमित प्रदानामुळे शासनाचे रुपये ३७ लाखाचे नुकसान झाले आहे. अशाप्रकारे श्री. महाले यांनी कर्तव्यात कसून केली.

बाब क्रमांक : २ -

पूर्वोक्त कालावधीमध्ये आणि पूर्वाक्त कार्यालयात कार्यरत असताना उक्त श्री. रा. सू. महाले यांनी जिल्हा परिषद, लघुसिंचन विभाग, धुळे या कार्यालयांनी कोषागारात सादर केलेल्या संक्षिप्त देयकासोबत नियंत्रण अधिका-याने तिमाही अखेरचे प्रमाणपत्र जोडलेले नसताना संक्षिप्त देयके पारित केली. त्यामुळे, शासन वित्त विभाग परिपत्रक दिनांक ४ जुलै १९६७ व दिनांक ११ मार्च १९८६ अन्वये दिलेल्या आदेशांचे उल्लंघन केले.

बाब क्रमांक : ३ -

पूर्वोक्त कालावधीमध्ये आणि पूर्वाक्त कार्यालया मध्ये काम करीत असताना श्री. रा. सू. महाले यांनी जिल्हा परिषद, लघुसिंचन विभाग, धुळे या कार्यालयाने सादर केलेल्या पाणी पुरवठा योजने अंतर्गत अनुदानाचे देयक विहित नमुन्यात नसतानाही ते देयक पारित करुन महाराष्ट्र कोषागार नियम १९६८ च्या नियम ३९१ चे उल्लंघन केले.

बाब क्रमांक : ४ -

पूर्वोक्त कालावधीमध्ये आणि पूर्वाक्त कार्यालयामध्ये काम करीत असताना श्री. रा. सू. महाले यांनी जिल्हा परिषद, लघुसिंचन विभाग, धुळे या कार्यालयाने सादर केलेल्या अनुदानांच्या देयकांवर शासनाने प्राधिकृत केलेल्या आधिकां-याची स्वाक्षरी नसतांना देयके पारित केली. त्यामुळे, महाराष्ट्र कोषागार नियम १९६८ च्या नियम ३९१ चे उल्लंघन केले.

बाब क्रमांक : ५ -

पूर्वोक्त कालावधीमध्ये आणि पूर्वाक्त कार्यालया मध्ये काम करीत असताना श्री. रा. सू. महाले यांनी जिल्हा परिषद, लघुसिंचन विभाग, धुळे या संस्थेस अनुदानाचे प्रदान रेखांकित धनादेशाऐवजी खुल्या धनादेशाद्वारे केले व त्यामुळे Rules of procedure for the guidance of the District Treasury on the introduction of system of payment of cheques या पुस्तिकेच्या परिच्छेद – ७ च्या उप परिच्छेद ८(एच) मध्ये विहित केलेल्या पध्दतीचे उल्लंघन केले.

बाब क्रमांक : ६ -

पूर्वोक्त कालावधीमध्ये आणि पूर्वाक्त कार्यालया मध्ये काम करीत असताना श्री. रा. सू. महाले यांनी कोषागाराच्या सर्व विभागाच्या नित्याच्या दैनिक तपशिलावर कडक लक्ष ठेवले नाही. तसेच कोषागाराच्या

कामकाजावर व दुय्यम कोषागारावर कर्मचा-यांच्या वर्तनावर योग्य नियंत्रण ठेवले नाही. अशाप्रकारे त्यांनी कर्तव्यात कसून केली.''

12. As stated above, the Respondent No.1 by final order dated 9th May, 2011 hold the Applicant guilty for all the charges and imposed punishment by impugned order dated 16th March, 2012, which has been confirmed in appeal on 05.06.2013.

13. Shri Kamble, learned Advocate for the Applicant sought to contend that the role of Applicant in passing the bill was very limited and the defences raised by the Applicant while submitting reply to the charge-sheet as well as raised before the Enquiry Officer have not been dealt with appropriately. He has further pointed out that there is no deliberation on the defence raised by him in the order of punishment imposed by the disciplinary authority as well as the order passed by the Appellate Authority. He further urged that, in view of large delay on the part of Respondents to complete the D.E, the Applicant was subjected to agony, and therefore, the charges framed in the D.E. are required to be quashed on the ground of delay also.

14. Per contra, Smt. S.P. Manchekar, learned CPO urged that the Tribunal now cannot re-appreciate the evidence as an Appellate Authority and there is nothing to establish that the findings recorded by the Enquiry Officer accepted by disciplinary authority as well as confirmed by the Appellate Authority are perverse or the punishment is shockingly disproportionate to proven misconduct. She referred to the decision in ***P. Gunasekaran's*** case as well as in ***Anant Kulkarni's*** case (cited supra) with the submission that the delay in conducting the D.E. has been properly explained and having regard to the serious charges, the delay itself cannot be the ground to quash the proceedings.

15. Now, the Tribunal is required to decide this O.A. within the parameters reiterated by the Hon'ble High Court while remitting back the matter to the Tribunal for decision afresh. True, the Hon'ble High Court was pleased to grant a liberty to the learned Advocate for the Applicant to demonstrate before Tribunal that the impugned order warrants interference within the restrictive parameters of judicial review.

16. The charges framed against the Applicant are set out in Para No.10 of the Judgment as above. As per Charge No.1, the Applicant had passed treasury bills of Rs.37 Lakhs pertaining to grant-in-aid. As per Rule 391 of Maharashtra Treasury Rules, 1968, it could not be sanctioned unless it bears a signature or counter-signature of the sanctioning authority i.e. Rural Development Department and such bill for granting aid shall be presented in Form No.MTR-44. In this behalf, the Applicant's defence is that the amount was claimed for urgent work on the basis of Undertaking given by H.O.D. under Rule 153(X) of Maharashtra Treasury Rules. The perusal of Rule 53 reveals that it pertains to general instructions regarding preparation and form of bills. Whereas, the Rule 39 specifically provides the manner in which the Bill for grant-in-aid is required to be presented which inter-alia provides that it should be presented in Form No.MTR-44 and must bear signature of the sanctioning authority. Whereas, in the present case, though the Bills were not in Form No.MTR-44 and was without sanctioned order from R.D.D. and was submitted in Form No.29. However, the Applicant passed Bill on the ground that the Head of Department has given Undertaking, which is permissible under Rule 153(X) of Maharashtra Treasury Rules. As the Applicant passed the Bill though submitted without proper compliance of Maharashtra Treasury Rules, the amount was disbursed and misappropriated by the employees working in Zilla Parishad. Had the Applicant took precaution the amount would not have been disbursed and perhaps the misappropriation of Rs.37 Lakhs could have been averted.

17. Charge No.2 pertains to passing of abstract contingency bill without obtaining quarterly certificate of Drawing and Disbursing Authority. Those four bills were passed as abstract contingency bill. Whereas as per Circulars issued by the Finance Department dated 04.07.1067 and 11.03.1986, unless such abstract contingency bill is supported by quarterly certificate of Drawing and Disbursing Authority, it should not have been passed for payment. The defence in this behalf that those were passed for payment in terms of Circular of Planning Department dated 26.06.1975 is not acceptable in view of specific instructions given by Finance Department in its Circulars dated 04.07.1967 and 11.03.1986. The Applicant being working as Treasury Officer under Finance Department ought to have seen that there is compliance of the Circulars issued by his Department.

18. Charge No.3 also pertains to the Bills regarding grant-in-aid which was required to be submitted in Form No.MTR-44 as provided in Rule No.391 of Maharashtra Treasury Rules. However, here again, the Applicant passed it without verifying non-compliance of Rule 391 of Maharashtra Treasury Rules. Here again, his defence is that it is permissible under Rule 153(X) of Maharashtra Treasury Rules is misplaced, as those are general instructions. When the matter is squarely covered under specific Rule 391, the defence of taking recourse of general instructions contained in Rule 153 is not permissible.

19. Charge No.4 held not proved.

20. Whereas, Charge No.5 pertains to issuance of uncrossed cheque though exceeding Rs.1000/-. As per Rules of procedure for guidelines of the District Treasury on the introduction of system of payment of cheque, the cheques for the amount exceeding Rs.1000/- (except the cheque pertained to salary and pension) are required to be issued by a crossed cheque. However, as the

uncrossed cheques were issued by the Applicant, it facilitates misappropriation of the said amount under cheque.

21. Charge No.6 is the summary of above charges, as the Applicant has failed to keep control over the work.

22. The Applicant was functioning as Treasury Officer, Dhule and was required to follow the instructions expressly issued in this behalf by the Finance Department. Where specific procedure and specific forms are prescribed to be followed as per Maharashtra Treasury Rules, the Treasury Officer is bound to follow such procedure scrupulously before passing Bills to ensure that it being relates to financial matters and disbursement to financial rules strict compliance is done. He cannot be allowed to take shelter of miscellaneous rules or general instructions as happened in the present matter. The duty was cast upon him to do it in a particular manner and no latitude is permissible as often such latitude is likely to result in embezzlement or misappropriation of public money which in fact happened in the present matter. Had the Applicant adhered to strict compliance or rejected or objected the Bills for want of strict compliance of Rules prescribed in this behalf perhaps huge public money would not have been misappropriated by the concerned who were separately dealt with in departmental action as well as by filing criminal prosecution.

23. In view of above, the stand taken by the Applicant that there is no material irregularity in passing Bills is without any substance and has to be rejected. Suffice to say, even if the correctness of the finding is examined within the restrictive parameters of judicial review, the finding holding the Applicant guilty cannot be faulted with.

24. This takes me to deal with the submission advanced by the learned Advocate for the Applicant on the point of delay in completion of D.E. True, the charge-sheet was issued on 11.09.1995 and final order of punishment was passed on 16.03.2012. Thus, it took 17 years for completion of D.E. It is well settled that the delinquent employee has right that the disciplinary proceedings instituted against him are to be included expeditiously and he is not made to undergo mental agony due to unexplained or inordinate delay in conclusion of the departmental proceedings. At the same time, while considering the delay, the Tribunal/Court has to consider the nature of charge, it's gravity, reasons for delay as well as the impact of the wrong committed by the delinquent and mere delay itself cannot be the ground to quash the departmental proceedings.

25. In the present matter, as explained by the leaned C.P.O. after issuance of charge-sheet on 18.09.1995, the Enquiry Officer was appointed on 10.10.1997. Unfortunately, he died in 1999, and therefore, another Enquiry Officer Shri Gaikwad was appointed on 16.05.2000. Thereafter, the Divisional Enquiry Officer was appointed on 20.03.2004. However, in the meantime, the GAD by G.R. dated 26.05.2006 cancelled old appointments of Enquiry Officers, and therefore, it was necessary to appoint fresh empanelled Enquiry Officers from the panel of retired Officers. Accordingly, Shri R.K. Meshram was appointed as an Enquiry Officer on 11.05.2007. He submitted report in 2010. After issuance of show cause notice, final punishment order was passed on 16.03.2012. Thus, the enquiry seems to have been delayed due to some administrative reasons.

26. In so far as the gravity of the charges are concerned, it is because of passing of Bills by the Applicant the said amount which was encashed on the basis of these Bills was misappropriated by the employees of Z.P. who were independently dealt with in departmental proceeding as well as by filing criminal prosecution. As such, had the Applicant adhered to strict compliance of the Rules

perhaps public money would have been saved. This aspect cannot be lost sight of. As such, considering the seriousness of the event followed later, in my considered opinion, the delay in conclusion of departmental proceeding itself cannot be the ground to quash the finding recorded therein in the facts and circumstances of the present matter.

27. In this behalf, this Tribunal is guided by the decision of Hon'ble Supreme Court in ***Anant Kulkarni's*** case (cited supra). In Para No.14 of the Judgment, the Hon'ble Supreme Court held is material, which is as follows :-

> "*The court/tribunal should not generally set aside the departmental enquiry, and quash the charges on the ground of delay in initiation of disciplinary proceedings, as such a power is de hors the limitation of judicial review. In the event that the court/tribunal exercises such power, it exceeds its power of judicial review at the very threshold. Therefore, a charge-sheet or show cause notice, issued in the course of disciplinary proceedings, cannot ordinarily be quashed by court. The same principle is applicable in relation to there being a delay in conclusion of disciplinary proceedings. The facts and circumstances of the case in question, must be carefully examined, taking into consideration the gravity/magnitude of charges involved therein. The Court has to consider the seriousness and magnitude of the charges and while doing so the Court must weigh all the facts, both for and against the delinquent officers and come to the conclusion, which is just and proper considering the circumstances involved. The essence of the matter is that the court must take into consideration all relevant facts, and balance and weigh the same, so as to determine, if it is in fact in the interest of clean and honest administration, that the said proceedings are allowed to be terminated, only on the ground of a delay in their conclusion."*

28. There is nothing on record to point out that the Applicant has suffered prejudice due to delay in completion of departmental proceedings. It is not his case that because of delay of departmental proceedings, he was deprived of promotional avenues or suffered monetary loss. This being the position, having regard to the gravity of the charges as well as the event followed thereafter i.e. misappropriation of the said amount by Z.P. employees, in my considered

opinion, the findings recorded by the disciplinary authority and maintained by Appellate Authority cannot be interfered with merely on the ground of delay.

29. The totality of aforesaid discussion leads me to sum-up that the O.A. is devoid of merit and deserves to be dismissed. Hence, the following order.

O R D E R

The Original Application is hereby dismissed with no order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai
Date : 24.04.2019
Dictation taken by :
S.K. Wamanse.
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