

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1060 OF 2016

DISTRICT : MUMBAI

Shri Shavarappa Narayan Balla,)
Age : 70 years, Occ. Retired Govt. Officer,)
Address : BDD Chawl No.9, Room No.5,)
Ground Floor, Ganpat Jadhav Marg,)
Worli, Mumbai 400 018) **....Applicant**

Versus

1. The State of Maharashtra,)
Through Secretary,)
Industry, Energy & Labour)
Department (Industry), Mantralaya,)
Mumbai 400 032)

2. The Minister of State, Home (Rural),)
Home (Rural), Public Health,)
Agriculture, Marketing & Tourism,)
(On the behalf of Governor of)
Maharashtra, Mantralaya,)
Mumbai 400 032) **....Respondents.**

Mr. C.T. Chandratre, learned Counsel for the Applicant.

Ms. Archana B.K., learned Presenting Officer for the Respondents.

CORAM : **Justice Mridula Bhatkar (Chairperson)**
Ms. Medha Gadgil, Member (A)

RESERVED ON : **15.09.2023.**

PRONOUNCED ON : **03.10.2023.**

J U D G M E N T

1. Applicant prays for direction to the Respondents to call the record and proceedings of the orders dated 21.02.2015 and 30.11.2015 issued by the Respondents and after examining its legality and validity the Tribunal be pleased to hold and declare the orders as bad in law and further be pleased to quash and set aside the same.

2. Applicant, Industries Officer challenges order dated 21.02.2015 and 30.11.2015 for his negligence by which the Government has suffered the loss of Rs.14,55,700/- while implementing the Government Seed Capital Scheme. By order dated 21.02.2015 the Applicant was held guilty and it was ordered that 10% amount is to be deducted permanently from his pension and an amount of Rs.3 lakhs or an amount of D.C.R.G. whichever is less is also to be recovered one time from him. Applicant has challenged the order before the Appellate Authority and the Appellate Authority by order dated 30.11.2015 confirmed the said order.

3. Learned Counsel has submitted that whatever defence the Applicant has raised before the Enquiry Officer and also before the Appellate Authority that defence was not considered and not recorded in the findings to that effect and on this ground the Enquiry Report and the order passed by the Appellate Authority are perverse. The Enquiry Officer has submitted the report on 02.08.2008. Learned Counsel has submitted that the enquiry was

conducted against 11 delinquent officers including the Applicant. Learned Counsel has submitted that in this case four witnesses were examined. The defence raised by the Applicant are :

- (a) The Applicant did not receive the necessary documents in order to prove the charges and there is no documentary evidence
- (b) Not a single witness has deposed against the applicant and still the enquiry officer conducted enquiry.
- (c) It was necessary for the Bank to check the viability of the proposal submitted by the beneficiary of the Seed Capital Scheme and after approval or recommendation given in respect of the viability and the competency of that beneficiary, the Government is supposed to release 15% of the total amount of the approved amount in the account of the beneficiary in the Bank. Accordingly, the Bank approved all 11 proposals viability and recommended and thereafter the Applicant has issued the cheque of 15% amount of the respective amount with the approval of the higher authority to the Bank and the said amount of 15% were subsequently deposited in the accounts of the respective beneficiaries.

4. Learned Counsel for the Applicant has submitted that all these proposals were presented before the Enquiry Officer. The Applicant has presented all documents disclosing real existence of 11 beneficiaries. Therefore, the Applicant has very less role to play in disbursing 15% of the loan amount to the beneficiaries of this Government Seed Capital Scheme.

5. Learned Presenting Officer has opposed this application and has described the role of the Applicant in this transaction and has submitted that it was the duty of the applicant to verify the true identity of the beneficiaries. The Applicant did not perform the duty diligently and he along with other 10 Government servants

are found responsible for the loss of Rs.14,55,700/- to the Government. Learned P.O. has submitted that the amount of Rs.4,71,844/- has already been recovered from the Applicant. Learned P.O. relies on letter dated 21.02.2015, relevant portion of which is reproduced below :

“२. सदर प्राप्त चौकशी अहवाल, अपचारी श्री. एस.एन. बल्ला यांचे निवेदन चौकशीचे दस्तऐवज आणि शिस्तभंगविषयक प्राधिकारी यांचे अभिप्राय विचारात घेता त्यांच्यावर बजावण्यात आलेले दोषारोप पूर्णतः सिद्ध होत असल्याचा निष्कर्ष शासनाने काढला आहे. त्यानुसार श्री. एस. एन. बल्ला यांनी कर्तव्यपरायणता न ठेवल्यामुळे त्यांच्याकडून म.ना.से. (वर्तपूक) नियम, १९७९ च्या नियम ३(१) (एक) व (दोन) चा भंग झाला आहे. त्यामुळे म.ना.से. (शिस्त व अपील) नियम, १९७९ च्या नियम ९ व म.ना.से. (निवृत्ती वेतन) नियम, १९८२ च्या नियम २७ अन्वये प्रदान केलेल्या शक्तीचा वापर करून सदर शासकीय नुकसानीचे स्वरूप विचारात घेता श्री. बल्ला, उद्योग अधिकारी (से.नि.) यांच्या निवृत्ती वेतनातून १०% (दहा टक्के) रक्कम कायमस्वरूपी कपात करणे तसेच शासन हानिच्या रकमेपोटी रु.३.०० लक्ष (तीन लक्ष) वा संपूर्ण उपदान यापैकी जी रक्कम कमी असेल ती रक्कम त्यांच्या उपदानातून एकरक्कमी वसूल करणे ही शिक्षा देण्याचा निर्णय शासनाने घेतला आहे. सदर शिक्षेस महाराष्ट्र लोकसेवा आयोगाने दि.२९/१०/२०१४ अन्वये मान्यता दिली आहे.

३. सदर शिक्षेविरुद्ध त्यांना अपील करावयाचे असल्यास म.ना.से. (शिस्त व अपील) नियम, १९७९ नियम १९ मध्ये दिलेल्या तरतुदीनुसार सदरचे आदेश प्राप्त झाल्याच्या दिनांक पासून ४५ दिवसांमध्ये मा. राज्यपाल, अपिलीय प्राधिकारी, राजभवन, मुंबई यांच्याकडे करता येईल”

6. While considering the submissions, we rely on the incidents which have occurred in the years 1994, 1995, 1996 and 1998. However, the Applicant retired on 30.04.2004 as Industrial Officer. Applicant's first provisional pension was started on 01.06.2004. On 22.11.1999, the report was submitted to the Government of his alleged negligence and irregularities and then on 17.05.2001 he was served with the charge-sheet. He was served with the charge-sheet on 17.05.2001 about the incidence which has taken place, pertaining to the year 1994 to 1996. It was a joint enquiry of 11 persons. All the 11 Government servants were found guilty and there was actual loss of the amount of Rs.14,55,700/-. The Government could not recover the amount as some persons were not identifiable or they did not pay the money or the reason /

object for which the loan amount was paid was not utilized for the same. We make it clear that such irregularities can be ascertained on the basis of the documents. However, the order of punishment was issued on 06.04.2015. He was given punishment of 10% permanent deduction and he was directed to pay Rs.3 lakhs or full gratuity whichever is less. The M.P.S.C. approved the said punishment on 29.10.2014. It was confirmed on 30.11.2015 by the Appellate Authority. We are informed that unfortunately when the application was filed in the year 2016 the Applicant was 70 years old. He retired on 30.04.2004 means nearly 19 years back. At present the applicant is nearly 76 to 77 years old and he is not getting full pension, but getting only provisional pension. We further rely on Rule 8(16), Rule 8(20) and Rule(25) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 reads as below :

“Rule 8(16) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of, the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the Government servant. The Presenting Officer shall be entitled to re-examine, the witnesses an any points on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses as it thinks fit.

Rule 8(20)

The inquiring authority may, after the Government servant closes his case and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him.

Rule 8(25)

After conclusion of the inquiry, a report shall be prepared by the inquiring authority, such report shall contain-

- (a) the articles of the charge and the statement of the imputations of misconduct or misbehaviour;
- (b) the defence of the Government servant in respect of each article of charge;
- (c) an assessment of the evidence in respect of each article of charge;
- (d) the findings on each article of charge and the reasons therefore”

7. Considering this, we are of the view that there is no point in further stretching the issue. We made this clear to learned Counsel and learned Presenting Officer in the open court. We are informed that out of 3 lakhs, amount of Rs.1,46,850/- i.e. gratuity amount is to be recovered whichever is less. So the gratuity amount is Rs.1,46,850/- which is already deducted and considering the nature of the offence and as it has jointly taken place, we are of the view that there should not be 10% permanent deduction from his pension, but 10% deduction should only be upto the date of filing of O.A. i.e. from 2004 to 2016 and thereafter he is entitled to get the full pension. We think it is proper to pass this order at our level as there is no point in wasting time, as the matter is old and considering the age of the applicant.

8. In view of Maharashtra Departmental Enquiries (Rules and Procedure), the Hon'ble Supreme Court has considered the aspect of jurisdiction of the Administrative Tribunals to interfere with the orders passed in departmental enquiries is akin to the jurisdiction of the Hon'ble High Court under Article 226 of the Constitution.

In the case of charges framed in the Departmental Enquiry the Tribunal can interfere only if the charges framed or other irregularities alleged can be said to have been made out or charged framed are contrary to any law. In this background, we are unable to grant relief of quashing and setting aside the Departmental Enquiry against the Applicant. We are also unable to give directions to the Respondents to refund the amount with interest which has been already been deducted. As the applicant has retired in the year 2004, considering the age of the Applicant and in view of the fact that he is getting only provisional pension, the O.A. stands disposed of with the following order :

- (A) We direct the Respondent that the order dated 21.02.2015 by which 10% amount is to be deducted permanently from his pension be modified and the said deduction be made only upto the date of filing of the O.A i.e. from 2004 to 2016.
- (B) The Applicant should get full pension from the year 2016 as per his entitlement.

SD/-

SD/-

(Medha Gadgil)
Member (A)

(Mridula Bhatkar, J.)
Chairperson

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