THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.1087 & 1088 OF 2016

DIST : KOLHAPUR

ORIGINAL APPLICATION NO.1087 OF 2016

Shri Maruti Mahadeo Jagtap,)
Aged 63 yrs, Occu.: retired as)
Round Forester from the office of Range Forest)
Officer (Research) Dodamarg, Dist.Sindhudurg.)
R/at : A/P. Mungurwadi, Tal. Gadhinglaj,)
Dist. Kolhapur,) **....Applicant**

Versus

1. The Chief Conservator of Forest (T),)
Kolhapur, O/at Van Vardhan, opp.)
Main Post Office, Tarabai Park,)
Kolhapur 3.)

2. The Principal Chief Conservator of)
Forest, (Forest Force Chief), M.S.)
Nagpur, O/at. Van Bhavan, Ramgiri Rd.)
Civil Lines, Nagpur -1.) **...Respondents.**

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ORIGINAL APPLICATION NO.1088 OF 2016

Shri Pandurang Dhondiram Kalebere)
Aged 57 yrs, Occu.: Round Forester in the)
Office of Deputy Conservator of Forest, Tarabai)
Park, Kolhapur.
R/at : A-893/2/1, Plot No.C-8, Datt Colony)
Devkar Panand, Kolhapur.) **....Applicant**

Versus

The Chief Conservator of Forest, Kolhapur & Anr.) **.....Respondents**

Shri A.V. Bandiwadekar, Advocate for the Applicants.
Smt. Kranti Gaikawad, Chief Presenting Officer for the Respondents

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 05.08.2019

J U D G M E N T

1. In these Original Applications, the Applicants have challenged the order of punishment passed by the Disciplinary Authority confirmed by the Appellate Authority as well as the order whereby the period of suspension has been treated as a period of suspension for all purposes by order dated 30.12.2015.

Shortly stated facts giving rise to the O.As. are as under:-

2. The Applicants in both these Original Applications while working as a Forester in Kolhapur Forest Division were placed under suspension by order dated 24.08.2005 and 25.08.2005 respectively invoking the Rule 4(1)(a) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (hereinafter referred to as 'Rules 1979' for brevity). The Applicants allegedly prepared false/ bogus passes for transportation of banned herbal i.e. forest product. In sequel, the crime was registered against them under Sections 468, 471 r/w 34 of I.P.C. with Ajara Police Station, Dist. Kolhapur. After completion of investigation, the charge sheet was filed against them in the Court of learned Judicial Magistrate Firest Class, Ajara. Thereafter in D.E., the charge sheet was issued against both under Rule 8 of 'Rules 1979'. As the subject matter of charges was common, joint inquiry was conducted against both the Applicants along with other delinquents. During pendency of D.E., the Applicants were acquitted in Criminal Case by learned Judicial Magistrate First Class, Ajara, Dist. Kolhapur on 10.12.2013 and 12.11.2014 respectively.

3. In the meantime, they were reinstated in services on 28.09.2010 and 20.09.2010 respectively. The Applicants in O.A.No.1087/2016 stands retired on 30.04.2011 on attaining the age of superannuation and D.E. which was already initiated was continued. In D.E., the Enquiry Officer submitted its report on 06.04.2008 with his findings that the Charge No.1 stands proved against the delinquents.

4. Consequent to it, the Disciplinary Authority issued show cause notice to the Applicants to which the Applicants submitted their reply claiming innocence and prayed for exoneration. However, the Disciplinary Authority after gap of seven years by order dated 30.12.2015 passed final order. As regard the Applicant in O.A.No.1087/2016, the Disciplinary Authority imposed punishment of 10% deduction of pension for one year in view of the fact that he already retired on 30.04.2011. Besides, the period from 24.08.2005 to 28.09.2010 i.e. from suspension to reinstatement in service was treated as suspension period for all purposes. Whereas, in O.A.No.1088/2016, the Applicant was subjected to punishment of withholding of one increment due on 01.07.2016 with permanent effect in view of the fact that he was due to retire on 30.11.2016. In his case also the period from 25.08.2005 to 20.09.2010 i.e. the period from suspension to reinstatement in service was treated as suspension period for all purposes.

5. Being aggrieved by the order of punishment passed by the Disciplinary Authority on 30.12.2015 by Respondent No.1 namely Chief Conservator of Forest, Kolhapur, the Applicants have filed the Appeal before the Respondent No.2 namely Principal Chief Conservator of Forest, Nagpur. However, the Appeal came to be dismissed on 28.06.2016. Being aggrieved by it, the Applicants have filed the present Original Applications.

6. In so far as the punishment part is concerned, learned Counsel for the Applicants sought to contend that in view of the acquittal of the Applicants in Criminal Cases, the findings of the Disciplinary Authority holding the Applicants guilty for the charges is unsustainable in law.

7. As regard the order of treating the entire period as a suspension period, learned Counsel for the Applicants has pointed out that before passing the order, show cause notice or opportunity of hearing was not given to the Applicants as contemplated under Rule 72(5) of Maharashtra Civil Services (Joining Time, Foreign Service, and Payments during

Suspension, Dismissal and Removal) Rules, 1981 (hereinafter referred as 'Rules 1981' for brevity). He urged that on this point, there is infringement of mandatory requirement of law. Therefore, the order is liable to be quashed. He further submits that in effect, the order of treating entire period of suspension of more than five years amounts to severe punishment as against the punishment inflicted against the Applicants namely deduction of 10% pension for one year in O.A.No.1087/2016 and punishment of withholding of next increment with cumulative effect in O.A.No.1088/2016. With this submission, he submits that the impugned orders are not sustainable in law.

8. Per contra, Smt. Kranti Gaikwad, learned Presenting Officer for the Respondents sought to support the impugned orders stating that the acquittal in Criminal Case does not have any effect over the proceedings of D.E., as the standard of proof required is different and in the Criminal Case, the Applicants were acquitted by giving benefit of doubt. As regards absence of notice under Rule 72(5) of 'Rules 1981', she tried to contend that no prejudice is caused to the Applicants by non issuance of notice. Thus, she fairly concedes that before passing the impugned order, notice was not given to the Applicants as to why the Applicants period from the date of suspension to reinstatement can't be treated as a suspension period for all purposes.

9. In view of submissions advanced by the learned Counsels, first issue posed for consideration is whether the order of punishment of deduction of 10% pension for one year in O.A.No.1087/2016 and punishment of withholding of one year increment in O.A.No.1088/2016 is unsustainable and secondly, whether the order of the Disciplinary Authority treating the entire period of suspension as a suspension period for all purposes is sustainable in law.

10. Needless to mention that in the matter of disciplinary proceedings, interference of the Tribunal or Court is permitted in limited situation and the Tribunal or court can't be act a second Court of appeal. Adequacy

and reliability of evidence can't be looked into judicial review and reappreciation of evidence led before the Enquiry Officer is not permissible unless the finding is shown perverse.

11. In this behalf, it would be apposite to refer the judgment of the Hon'ble Supreme Court in ***(2015) 2 SCC 610 (Union of India and Ors. V/s. P. Gunasekaran),*** wherein the Hon'ble Supreme Court laid down the following parameters :-

(a) the enquiry is held by a competent authority;

(b) the enquiry is held according to the procedure prescribed in that behalf;

(c) there is violation of the principles of natural justice in conducting the proceedings;

(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

(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;

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence."

12. 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:**

(a) 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."

13. I have gone through the report of the Enquiry Officer as well the order passed by the Disciplinary Authority with the assistance of learned Counsel for the Applicants.

14. In so far as the sustainability of punishment imposed by the Disciplinary Authority is concerned, nothing is pointed out by the learned Counsel for the Applicants to warrant interference by the Tribunal exercising the powers of judicial review within the parameter as discussed above. Undisputedly full opportunity was given to the Applicants to defend the charges levelled against them and the punishment can't be said to be disproportionate to the charges levelled against them. This is not a case of punishment without evidence in support of charge. No perversity can be attributed for the findings recorded by the Disciplinary Authority.

15. Perusal of record reveals that initially, the preliminary enquiry was conducted and later, the regular D.E. was initiated. In D.E. three witnesses were examined. The allegations against the Applicants were relating to forgery in the transportation passes issued for permitting transport of forest products. The perusal of the impugned order reveals that the defence of the Applicants was that they had entrusted blank passes to one employee namely Shri Sambhaji Pawar and it is that person Shri Sambhaji Pawar who had committed illegality. The Disciplinary Authority has rightly commented that it was the responsibility of the Applicants to issue passes personally and in accordance to instructions and rules but they abdicated their duty by entrusting the work to Shri Sambhaji Pawar and thereby acted negligently, irresponsibly and it amounts to dereliction in duty. As such, findings recorded by the Disciplinary Authority holding the Applicants guilty for mis-conduct can't be faulted with.

16. True, the Applicants were acquitted in the Criminal Case for the charges under Section 468, 471 r/w 34 of I.P.C. However, that aspect itself could not exonerate the Applicants from the charges levelled in D.E. on the basis of evidence laid against them. In fact, in the Criminal Case, the Applicants were acquitted by giving benefit of doubt as seen from the judgment. The Disciplinary Authority had also noted this aspect while passing the impugned order. Needles to mention that the standard of proof required to establish the charge in Criminal Case is different from the standard of proof required to prove the charges in D.E. Here, acquittal particularly is of benefit of doubt. Suffice to say, findings recorded by the Disciplinary Authority holding the Applicants guilty for the charge No.1 levelled against them can't be faulted with.

17. No question comes whether the order of Disciplinary Authority treating the entire period of suspension as a suspension period is sustainable.

18. Shri A. V. Bandiwadekar, learned Counsel for the Applicants has pointed out that the Disciplinary Authority had not recorded the finding that the entire suspension period was wholly justified and, therefore, it being the case of non application of mind, the impugned order is unsustainable in law. He further submits that in fact this amounts to imposition of severe punishment. Whereas, the punishment imposed for the alleged mis-conduct in the form of 10% deduction of pension for one year and for withholding of one increment respectively, is minor punishment.

19. Perusal of Rule 72(5) of 'Rules 1981' reveals that before passing order of treatment to suspension period, the Disciplinary Authority is required to give notice to the delinquent and the principle of natural justice are required to be followed. Issuance of notice is mandatory and the Disciplinary Authority is required to pass order after considering the representation of the delinquent. Admittedly, in the present case, no

such notice was issued to the Applicants under Rule 72(5) of 'Rules 1981'. It is explicit that the Disciplinary Authority has issued composite order at once by imposing punishment for mis-conduct as well as in the same order treated the entire period of suspension as suspension period for all purposes. Indeed, the authorities required to consider whether the suspension period was wholly unjustified or justified. In the present case, without recording any such findings and without giving opportunity of hearing, directly the order of treating entire period of suspension as suspension period for all purposes has been passed. Therefore, it can't be said that no prejudice is caused to the Applicants as in effect severe punishment is imposed by treating the entire period of suspension as suspension period though for the charges, punishment imposed is minor punishment.

20. Here, it may be noted that the D.E. was initiated in 2006 and the Enquiry Officer has submitted its report on 06.04.2008. The Applicants have also submitted their reply on 04.06.2008 but it took seven years for passing final order dated 30.12.2015. Material to note that by letter dated 15.01.2007, the Government had directed the Respondent No.1 i.e Chief Conservator of Forest, Kolhapur to expedite the proceedings and to take decision of reinstatement of the Applicants in terms of G.R. dated 05.05.2006. However, despite directions from the Government by letter dated15.01.2007, the Respondent No.1 did not take any steps for expeditious conclusion of D.E. or for reinstatement of the Applicants in service. The Applicants in O.A.No.1087/2016 was reinstated on 28.09.2010 and the Applicant in O.A.No.1088/2016 was reinstated on 20.09.2010 belatedly. As such, after three years, belatedly**,** they were reinstated, despite the specific directions by the Government by order dated 15.01.2007. The Applicants were placed under suspension on 24.08.2005 and 25.08.2005 respectively. As such for more than five years, they were under suspension and this long period of suspension was treated as a period of suspension for all purposes without giving

opportunity of hearing to the Applicants, which is clearly unsustainable in law.

22. True, where the delinquent is subjected to minor punishment, in that event normally the period of suspension should not be treated as a period of suspension. However, in the present case, the decision of imposing minor punishment seems to have been taken in view of the fact that when the matter was finally decided by the Disciplinary Authority by impugned order dated 30.12.2015 by that time, the Applicants in O.A.No.1087/2016 had already retired on 30.04.2011 and the Applicant in O.A.No.1088/2016 was due to retire on 30.11.2016. Having noted these aspects, the Disciplinary Authority imposed minor punishment.

23. Be that as it may, the decision about the treatment of suspension period needs to be taken irrespective of the punishment recorded in imposing D.E. after giving opportunity of hearing to the delinquent. This being the position, in my considered opinion, it would be appropriate to remit the matter to the Respondent No.1 so as to decide about the treatment of suspension period after giving opportunity of hearing to the Applicants.

24. The totality of aforesaid discussion leads me to sum-up that the findings recorded by the Disciplinary Authority holding the Applicants guilty and punishment imposed upon them needs no interference. However, the impugned order to the extent of treating the entire period of suspension as a suspension period for all purposes deserves to be set aside and the matters need to be remanded back to Respondent No.1 to decide the same afresh after giving opportunity of hearing to the Applicants. Original Applications, therefore, deserves to be allowed partly. Hence the following order.

ORDER

(a) O.A.No.1087/2016 and O.A.No.1088/2016 are allowed partly.

(b) The order of Disciplinary Authority holding the Applicants guilty and punishment imposed upon them is maintained.

(c) The order of Disciplinary Authority treating the period of suspension as a entire period of suspension for all purposes is set aside and the matters are remanded back to the Respondent No.1 to decide the same afresh after giving opportunity of hearing to the Applicants. The Respondent No.1 is directed to decide the issue of nature / treatment of suspension period after giving notice to the Applicants and on hearing them in person and shall pass the final order, deciding the nature of suspension period within two months from today.

(d) No order as to costs.

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

Place : Mumbai
Date : 05.08.2019
Dictation taken by : V.S.MANE.