

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1210 OF 2016

DISTRICT : SOLAPUR

Smt. Sudha C. Desai.)
Age : 57 Yrs., Working as Naib Tahasildar,)
Residing at A/2-207, Mantri Chandak)
Park, Vijapur Road, Solapur.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Chief Secretary,)
Mantralaya, Mumbai – 400 032.)
2. The Additional Chief Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai – 400 032.)
3. The Divisional Commissioner.)
M.S, Pune Division, Council Hall,)
Pune – 411 001.)
4. The Collector.)
Collector Office Compound,)
Main Building, Siddheshwar Peth,)
Solapur – 413 003.)...**Respondents**

Mrs. Punam Mahajan, Advocate for Applicant.

Mr. S.S. Dole, Presenting Officer for Respondents.

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

DATE : 17.02.2020

JUDGMENT

1. The Applicant has challenged the punishment of withholding two increments with cumulative effect imposed by Disciplinary Authority by order dated 08.08.2008 and maintained by Appellate Authority by order dated 30.03.2012 and also challenged the communication dated 10.01.2014 whereby Revision Application was rejected by the Government.

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

At the relevant time, the Applicant was serving as Supply Awal Karkun in the Office of Tahasildar, Mohol, District Solapur. The Team headed by Shri B.M. Naik, Deputy Director, Civil Supply Department, Mumbai consists of Supply Inspector Shri V.J. Rajput, Shri C.B. Phadtare and Shri V.S. Ghodke, Godown Incharge inspected stock of grain and 3482.60 quintal wheat found less than Stock Register and also found 291.96 quintal rice excess than Stock Register. The Inspecting Team further found that the Registers and balance-sheets of grain is not maintained properly. Accordingly, Shri B.M. Naik, Deputy Director, Civil Supply Department submitted his report dated 1st December, 2004 to Collector, Solapur. On receipt of it, the Collector, Solapur issued show cause notice to the Applicant on 28.07.2006. Accordingly, the Applicant submitted her explanation/reply on 30.07.2006 explaining that she is not responsible for the discrepancies pointed out by the Inspecting Teaming and maintained the accounts in her period properly. The Collector, Solapur being not satisfied with the explanation, issued charge-sheet under Rule 8 of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (hereinafter referred to as 'Rules of 1979' for brevity) and initiated the departmental enquiry (D.E.) against the Applicant. She again submitted her reply to the charge-sheet denying the charges levelled against her.

3. Shri B.C. Hunge was appointed as an Enquiry Officer. In enquiry, three witnesses viz. Shri S.S. Sangade, Tahasildar, Mohol, Shri V.S. Ghodake, Godown Manager and Shri S.Y. Bhosale, Assistant District Supply Officer, Solapur were examined. The Enquiry Officer on completion of enquiry submitted report exonerating the Applicant from the charge stating that the witnesses examined in the enquiry did not state anything incriminatory against the Applicant. The Enquiry Officer further held that the witnesses examined were not in a position to tell anything specifically stating that they have no knowledge to the questions put to them in cross-examination. Accordingly, the Enquiry Officer held that there is no evidence to hold the Applicant guilty. However, the Enquiry Officer disagreed with the Enquiry Report and issued notice to the Applicant on 17.06.2008 with tentative reasoning and called upon the Applicant as to why four increments should not be withheld. The Applicant submitted her reply reiterating that the charges levelled against her are not proved in the enquiry and she is not responsible for the discrepancies revealed in inspection of Godown. However, the Collector, Solapur by order dated 08.08.2008 recorded finding that the charge against the Applicant is proved imposed punishment of withholding of next two increments and cumulative effect by order dated 08.08.2008. The appeal preferred against the order of punishment was dismissed by order dated 30.03.2012. The Applicant has also made application for revision to the Government, which was also dismissed by communication dated 10.01.2014. These orders are under challenge in the present O.A.

4. To begin with, let us see the charge against the Applicant.

“दिनांक ०१/०१/२००४ ते ६/७/२००५ या कालावधीत आपण पुरवठा लेखा अबल कारकून म्हणून कार्यरत आहात. मा. उपसंचालक, नागरी पुरवठा महाराष्ट्र शासन मुंबई यांचे कार्यालयातील तपासणी पथकाने माहोळ तालुक्यातील शासकीय गोदामाची तपासणी दिनांक २५/१०/२००४ ते २९/१०/२००४ या कालावधीत केली असता प्रत्यक्ष पडताळणीमध्ये पुस्तकी शिल्लकीपेक्षा ३४८२.६०.००० किंवाटल तांडुळ जास्त असलेचे दिसून आले. पुरवठा लेखा अबल कारकून या नात्याने तालूका लेखे अदयावत ठेवणे व गोदामे लेखे अदयावत ठेवणेबाबत पर्यवेक्षण करून गोदाम लेखे व तालूका लेखे यांचा ताळमेळ घेणे. प्रत्यक्ष भरणा चलने व शिल्लक साठा यांचेशी मेळ घेऊन लेखे अदयावत ठेवणे इ. कर्तव्य आहेत. ही कर्तव्ये आपण आपल्या पदावर कार्यरत असताना समाधानकारक पार पाडलेली नाहीत. तसेच मासिक आर साठा पत्रक सर्व संबंधीत अन्य पत्रकाशी रुजवात घेऊन दरमहा पाठविणे आवश्यक आहे. यामध्ये तफावत दिसून आलेस त्वरीत तहसिलदारांचे निदर्शनास आणून पुढील कारवाई करणे आवश्यक असते. अशी रुजवात घेणेचा प्रयत्न कधीही केलेला नाही. तशी तफावत निदर्शनास आणली असती तर

पुढील अपहार टाळला असता. आपण कार्यरत असताना आपण कार्यरत कालावधीत कर्तव्याच्या अनुषंगाने आपले कर्तव्यामध्ये कसून केले आहे. सबब वर नमूद दोष आपलेकडून झालेले आहेत. तहसिल मुख्यालयी अपहाराची घटना घटत असताना सदरची बाब वरिष्ठांच्या निदर्शनास आणलेली नाही, गोदामातील लेखेही तपासले नाहीत. या गंभीर बाबीस आपण जबाबदार आहात सबब वरील दोषारोप आपणावर ठेवून महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम १९७९ च्या नियम ८ उपनियम २३ अन्वये आपणाविरुद्ध कारवाई करणेत येत आहेत.”

5. Smt. Punam Mahajan, learned Advocate for the Applicant assailed the impugned order contending that despite the absence of any indiscriminatory evidence and report of Enquiry Officer exonerating the Applicant from the charge, the Disciplinary Authority imposed the punishment. She has pointed out that, indeed, the Disciplinary Authority had also realized that the enquiry was not conducted properly with specific observation that the Enquiry Officer, Presenting Officer as well as witnesses examined in the enquiry have not deposed properly but despite acknowledging this position that there is no proper evidence, the Disciplinary Authority imposed the punishment only on surmises. The second important aspect she has pointed out that for the same incident, the Government had proposed enquiry against Shri V.S. Ghodake, Godown Manager, Shri C.B. Phadatare, Assistant District Supply Officer and Shri V.J. Rajput, Assistant District Supply Officer as well as Shri R.A. Kawade, Shri B.B. Kolekar, Assistant District Supply Officers and Shri Waghmare, Tahasildar, Mohol, but the Government dropped the enquiry against them on the ground that substantially it was revealed that there was no shortage of grain in the Godown. In this behalf, she has pointed out that the letter issued by Government dated 04.10.2008, which is at Page No.76 of P.B. This aspect of dropping of enquiry against these Officials is not disputed. With this submission, she submits that the Applicant is made scape-goat and subjected to injustice and discrimination and prayed to allow the O.A.

6. Per contra, Shri S.S. Dole, learned Presenting Officer made feeble attempt to justify the imposition of punishment.

7. True, the report of Enquiry Officer is not binding upon the Disciplinary Authority and later can disagree with the report submitted

by Enquiry Officer and in law empowered to impose punishment after giving reasonable opportunity to the delinquent. In the present case, the Enquiry Officer has exonerated the Applicant but the Disciplinary Authority disagreed with the report and issued notice to the Applicant with his tentative reasons to hold her guilty for the charge and on receipt of explanation imposed punishment of withholding two increments with cumulative effect. On this background, material question is whether the finding of guilt recorded by Disciplinary Authority is based on evidence. No doubt, in the matter of punishment, in D.E, the jurisdiction of the Tribunal is limited, as the Tribunal cannot re-assess to re-appreciate the evidence. However, where it is a case of no evidence and the finding is apparently unsustainable or perverse, then interference by the Tribunal is imperative. The Tribunal is conscious that strict Rules of Evidence Act are not applicable to the domestic enquiry and the charge need not be proved beyond reasonable doubt alike criminal case. The standard of proof in domestic enquiry is of preponderance of probabilities.

8. Now let us see whether the Department could bring on record some indiscriminatory evidence against the Applicant. Admittedly, the Applicant was Supply Awal Karkun in Tahasil Office. Shri V.S. Ghodake was Godown Manager. The Inspecting Team laid by Shri B.M. Naik, Civil Supply Department investigating the Godown from 25.10.2014 to 29.10.2004 with the assistance of Shri V.J. Rajput and Shri C.B. Phadatare, then Supply Inspectors. At the relevant time, Shri Waghmare was Tahasildar, Mohol. Interesting to note that, though Shri V.J. Rajput, Shri V.B. Phadatare and Shri V.S. Ghodake were part of the Inspecting Team, except Shri V.S. Ghodake, none of them was examined in enquiry. It appears that, at the same time, the enquiry was also contemplated against Shri V.J. Rajput, Shri V.G. Phadatare and Shri V.S. Ghodake, but ultimately the Government dropped the enquiry against them. This aspect will be dealt with a little later in detail. Presently, suffice to note that except Shri Ghodake, no other witnesses from the Inspecting Team

who would have been the best witness to prove the charge has been examined.

9. Now, turning to the witnesses examined in the enquiry, the Presenting Officer had examined witness No.1 – Shri S.S. Sangade, Tahasildar, Mohol, who was indeed have no personal knowledge about the incident. He joined as Tahasildar, Mohol on 23.11.2005. Whereas, the incident relate to the inspection from 15.10.2004 to 29.10.2004. Suffice to say, he was not acquainted with the factual aspect and had no personal knowledge. All that, he stated in his Examination Chief that 2482.60 quintal wheat was less than Stock Register and 291.96 quintal rice was in excess than Stock Register. All that he stated that the charges levelled against the Applicant are correct. This hardly be treated as evidence to prove the charge. He was subjected to cross-examination and had feigned ignorance about the relevant facts which constitute the charge. In cross-examination, he stated as follows :-

“परिशिष्ट २ मधील क्रमांक १ नूसार नेमक्या कोणत्या महिन्याचे / वर्षाचे तालूका लेखे गोदाम लेखे आपण अदयावत ठेवलेले नाहीत व त्याचा ताळमेळ घेतलेला नाही याबाबत निश्चित आता सांगता येणार नाही.

मासिक आर साठापत्रक अन्य पत्रकातील व प्रत्यक्ष साठा यांचेशी रुजवात घेउन दरमहा पाठविलेले आहेत. यामध्ये कोणत्या महिन्यात तफावत दिसून आली याबाबत आता नक्की सांगता येणार नाही.

पीएलए १ ते ११ जमा खर्चाच्या कोणत्या महिन्याच्या नोंदवहया आपण अदयावत ठेवलेल्या नाहीत हे नक्की सांगता येणार नाही.

कोणती खोटी पत्रके आपण पाठविलेली आहेत हे नक्की सांगता येणार नाही.

परिशिष्ट २ मधील क्रमांक ४ मध्ये नमूद कोणता शक / वसूलीबाबत आपण पुर्ततेसाठी प्रयत्न केलेले नाहीत हे आता नक्की सांगता येणार नाही.

परिशिष्ट २ मधील क्रमांक ५ मध्ये नमूद केल्यानुसार कोणत्या कागदपत्राचा कॉस संदर्भ तपासण्यात आपण कसून केल्याने शासनाचे नुकसान झाले हे सांगता येत नाही.

तहसिलदार यांच्या सहमतीने कोणती वसूली / शकपुर्तता आपण जिल्हा पुरवठा कार्यालयास सादर केलेली नाही हे सांगता येत नाही.

परिशिष्ट २ मधील क्रमांक ७ मध्ये नमूद केल्यानुसार कोणते दैनिक / साप्ताहिक / पाक्षिक / मासिक अहवाल आपण खोटे पाठवून शासनाची पर्यायाने जनतेची फसवणूक केलेले आहे असे निश्चित उदाहरण सांगता येत नाही.

दिनांक २५/१०/२००४ ते २९/१०/२००४ या कालावधीत शासकीय धान्य गोदाम येथे मोजदाद करण्याच्या स्थितीत धान्य ठेवण्यात आले होते काय हे सांगता येणार नाही.

शासकीय धान्य गोदाम मोहोळ येथे धान्याची नोव्हेंबर २००४ मध्ये तहसिलदार मोहोळ यांनी प्रत्यक्ष मोजदाद केली होती हे खरे आहे.

नोव्हेंबर २००४ मध्ये तहसिलदार मोहोळ यांनी जी मोजदाद केली त्यामध्ये कोणत्याही प्रकारे गहू, तांदुळ कमी जास्त आढळून आलेला नाही.

मा. जिल्हा पुरवठा अधिकारी सोलापूर यांनी नोव्हेंबर २००४ मध्ये व मा.उपविभागीय अधिकारी माढा विभाग, कुर्दुवाडी यांनी जानेवारी २००५ अनुक्रमे ५ कर्मचा-यांचे पथक नेमून शासकीय धान्य गोदाम मोहोळ येथील धान्याची प्रत्यक्ष मोजदाद (पोत्याने पोते) केलेली आहे हे खरे आहे.

यावेळी धान्यात घट किंवा वाढ दिसून आली नाही.”

10. As such, the evidence of Shri S.S. Sangade is of little assistance to prove the charge in view of the statement made by him in cross examination.

11. Now turning to the evidence of 2nd witness Shir V.S. Ghodke, as stated above, it appears that the enquiry was also contemplated against him but ultimately dropped. Thus, at the relevant time, he was co-delinquent. Interesting to note that he clearly stated in Examination Chief itself that the D.E. is contemplated against him, and therefore, he cannot give evidence. He stated as follows :-

“प्रस्तुत प्रकरणात माझेवर देखील दोषारोप ठेवण्यात येवून माझी देखील विभागीय चौकशी प्रस्तावित आहे. यामुळे मी या प्रकरणात काहीही साक्ष देवू शकत नाही.

याउपर मला अधिक काही सांगावयाचे नाही.”

As such, in Examination Chief itself, he made volte-face. This being the position, the situation turns out that he did not make any incriminating statement. Apart in cross-examination, he stated as follows :-

“आपणावर ठेवण्यात आलेल्या दोषारोपाशी मी तपासणी करून खात्री करण्याचा प्रश्न उदभवत नाही.

मला या चौकशी प्रकरणात साक्षिदार म्हणून कशी नेमणूक केलेली आहे याचाच मला अदयाप उलघडा झालेला नाही.

या दोषारोपपत्रातील कोणत्याही दोषारोपाबाबत मला काहीही माहिती नाही.

सन २००४ मध्ये सहायक संचालक, नागरी पुरवठा मुंबई यांनी गोदामाची तपासणी केली होती हे खरे आहे. या तपासणीमध्ये किती धान्याची तफावत आढळून आली हे मला माहित नाही.”

12. Then comes witness No.3 – Smt. S.Y. Bhosale, who joined as Assistant District Supply Officer, Solapur on 04.06.2007 and had no personal knowledge of the incident in question. All that he stated that

the charges are correct. This could hardly be treated as indiscriminatory evidence against the Applicant. Apart in cross-examination, he made following statements :-

“परिशिष्ट २ मधील क्रमांक १ नुसार नेमक्या कोणत्या महिन्याचे / वर्षाचे तालूका लेखे गोदाम लेखे आपण अद्यावत ठेवलेले नाहीत व त्याचा ताळमेळ घेतलेला नाही हे दोषारोप पत्र व त्याचे विवरणपत्र परिशिष्ट २ पाहता मला सांगता येत नाही.

मासिक आर साठा पत्रक अन्य पत्रकाशी व प्रत्यक्ष साठा यांचेशी रुजवात घेऊन कोणत्या महिन्यात तफावत दिसून आली हे मला सांगता येत नाही.

पीएलए १ ते ११ जमा खर्चाच्या कोणत्या महिन्याच्या नोंदवह्या आपण अद्यावत ठेवलेल्या नाहीत हे मला सांगता येत नाही.

कोणती खोटी पत्रके आपण पाठविलेली आहेत हे मला सांगता येत नाही.

परिशिष्ट २ मधील क्रमांक ४ मध्ये नमूद कोणत्या शक/वसूली बाबत आपण पुर्ततेसाठी प्रयत्न केलेले नाहीत हे मला सांगता येत नाही.

शासनाची पुर्वीची व नविन अशी गुंतलेली रक्कम किती ज्यामुळे शासनाचे नुकसान झालेले आहे हे सांगता येत नाही.

परिशिष्ट २ मधील क्रमांक ५ मध्ये नमूद केल्यानुसार कोणत्या कागदपत्राचा क्रॉस संदर्भ तपासण्यात आपण कसूर केल्याने शासनाचे नुकसान झालेले आहे हे मला सांगता येत नाही.

मा. तहसिलदार यांच्या सहमतीने कोणती /शक पुर्तता आपण जिल्हा पुरवठा कार्यालयास सादर केलेले नाहीत याबाबत एकही उदाहरण मला सांगता येत नाही.

परिशिष्ट २ मधील क्रमांक ७ मध्ये नमूद केल्यानुसार कोणते दैनिक, साप्ताहिक, पाक्षिक, मासिक अहवाल आपण खोटे पाठवून शासनाची पर्यायाने जनतेची फसवणूक केलेली आहे याबाबत एकही उदाहरण मला सांगता येत नाही.

परिशिष्ट २ मधील विवरणपत्रात नमूद १ ते ७ बाबात मी माझ्या साक्षीमध्ये सहमती दर्शविलेली आहे. कार्यालयीन शिस्त विचारात घेऊन व दोषारोपपत्र पाहून मी साक्ष दिलेली आहे.”

13. Thus, it is quite clear from the statement made by Smt. S.Y. Bhosale that she had no personal knowledge of the relevant facts in question, and therefore, her evidence does not incriminate the Applicant.

14. It is on the above background of the nature of evidence tendered by Presenting Officer, the Enquiry Officer submitted report that the witnesses examination could not indiscriminate the Applicant stating that they have no personal knowledge of the relevant facts or the incident in question, and therefore, the charges framed against the Applicant are not proved. He thus exonerated the Applicant.

15. Now turning to the order passed by Disciplinary Authority, material to note that the Disciplinary Authority also realized that there is

no proper evidence to prove the charge against the Applicant. However, the Disciplinary Authority observed that the charge could not be proved because of fault on the part of Presenting Officer for not bringing proper evidence on record. He even observed that the Enquiry Officer Shri Rajkumar Kharatmal, the then District Supply Officer as well as witnesses are guilty of dereliction in duties in not bringing proper evidence. The relevant portion from his report (Page No.72) is as follows:-

“यावरून साक्षीदार क्रं. 9 श्री. शांताराम सांगडे तहसिलदार मोहोळ, सरकारी साक्षीदार क्रं. 8 श्रीमती एस.वाय. भोसली सहा. जिल्हा पुरवठा अधिकारी सोलापूर आणि श्री. राजकुमार खरटमल सादरकर्ता अधिकारी तथा जिल्हा पुरवठा अधिकारी सोलापूर यांनी शासनाची बाजू चौकशी अधिका-या समोर व्यवस्थिती मांडली नाही त्यामुळे अपचारी श्रीमती देसाई यांचे विरुद्ध दोषारोप सिध्द झालेला नाही. वास्तविक पहाता दोषारोपांच्या सिध्दतेसाठी कागदपत्रांचा अभ्यास करून चौकशी अधिका-या समोर शासनाची बाजू सक्षमपणे भांडणे हे सरकारी साक्षीदारांचे कर्तव्य आहे त्यात त्यांनी कसून केली आहे. तसेच श्री. राजकुमार खरटमल जिल्हा पुरवठा अधिकारी यांनी सादरकर्ता अधिकारी यांचे कर्तव्यात कसून केलेले आहे, असे दिसून येते.

सरकारी साक्षीदार क्रं. 9 व 8 आणि सादरकर्ता अधिकारी यांनी शासनाचे बाजू चौकशी अधिका-या समोर व्यवस्थितरित्या न मांडलेने अपचारी श्रीमती देसाई यांचे विरुद्ध यांचे परिशिष्ट 9 मधील दोषारोप सिध्द झालेला नाही असे चौकशी अधिकारी यांचे निष्कर्षा वरून दिसून येते. तांत्रिक मुद्द्यामुळे अपचारी यांचे विरुद्ध दोषारोप सिध्द होऊ शकलेला नाही. दोषारोपांच्या गुणानुगुणावरून चौकशी झालेली नाही. त्यामुळे चौकशी अधिकारी यांचे निष्कर्षाशी सहमत येणार नाही. कारण मोहोळ धान्य गोदामामध्ये अपहार झालेला आहे ही तर बाब खरी आहे.”

16. Thus, despite acknowledging that there is no evidence against the Applicant, the Disciplinary Authority proceeded ahead and relied upon one subsequent aspect of dereliction in duties on the part of Applicant pertaining to period from 01.01.2005 to 06.06.2005, which is not subject matter of present enquiry. Thus, it is on the basis of alleged dereliction in duties on the part of Applicant for the period from 01.01.2005 to 06.06.2005, the Disciplinary Authority assumed that the Applicant must have been guilty for further discrepancies and shortage of grain in the period from 25.10.2004 to 29.10.2004. In other words, the Disciplinary Authority held the Applicant guilty only on assumption only. Needless to mention that such finding based upon alleged misconduct of previous period which is not the charge for the present enquiry can hardly be sustained.

17. Furthermore, another important aspect to be noted is that the enquiry against superior Officers viz. Shri Kawade and Shri Kolekar who were Assistant District Supply Officers at the relevant time as well as

Shri Waghmare who was Tahasildar, Mohol at the relevant time as well as against Shri Ghodke who was Godown Manager at the relevant time was dropped by the Government having found that there was no shortage of grain in the Godown. Here material to note that the charge of shortage of grain and discrepancies are the same, as seen from charge-sheet issued against the Applicant issued against the Applicant (Page No.27 of P.B.). In inspection during 25.10.2004 to 29.10.2004, 3482.16 quintal wheat was found less and 291.96 quintal rice was found excess than the Stock Register. Interestingly, the perusal of charge-sheet issued against Shri Kawade also reveals the same charge of 2482.16 quintal wheat less and 291.96 quintal rice excess than Stock Register in the inspection period from 25.10.2004 to 29.10.2004. Suffice to say that for same charge though initially D.E. was proposed against the above named superior Officers, it was dropped by the Government on the ground that later in November, 2004, Stock was rechecked and found no discrepancy. In this behalf, it would be apposite to see the contents of the letter dated 4th October, 2008 issued by the Government closing the enquiry against Shri Kolekar and others, which is at Page No.76 of P.B. and the contents are as follows :-

“विषयांकित प्रकरणी संदर्भाधीन पत्रासोबत श्री. खडतरे व श्री. रजपूत यांच्याविरुद्ध शिस्तभंगाच्या कारवाईचा प्रस्ताव शासनास सादर करण्यात आलेला होता. सदर प्रस्ताव हा दिनांक २४.१०.२००४ ते २९.१०.२००४ या कालावधीत पुरवठा आयुक्त कार्यालयाने मोहीळ येथील शासकीय गोदामाच्या तपासणीच्या अनुषंगाने निदर्शनास आलेल्या धान्य तुटीसंदर्भात होता. यामधील श्री.बी.बी.कोळेकर, श्री.आर.ए.कवडे व श्री.एस.एस.वाघमारे हे महसूल अधिकरी असल्याने अशा स्वरूपाचा प्रस्ताव महसूल व वन विभागाकडे सादर करण्यात आला होता. या दोन्ही प्रस्तावांवर शासन स्तरावर अन्न,नागरी पुरवठा व ग्राहक संरक्षण विभागाने घेतलेल्या निर्णयानुसार तत्कालीन परिस्थितीत निवडणूकीच्या कामाकाजामुळे धान्याची पडताळणी होऊ न शकल्याने प्रत्यक्षात कोणतीही धान्या तूट नसल्याने निदर्शनास आले होते व याच आधारावर विधानसभा तारंकित प्रश्नक्रमांक १५१७२ ला दिनांक ११.०७.२००५ रोजी उतर देण्यात आलेली होते. या पाशवभूमीवर सदर कालावधीत मोहीळ येथील शासकीय गोदामामध्ये कोणतीही धान्य तूट आढळून न आल्याच्या निष्कर्षास शासनाची संमती देण्यात येत आहे. त्याचबरोबर तसे अभिप्राय महसूल व वन विभागाच्या संबंधित नस्तीव (प्र.क्र.१३६/ई-४) देण्यात आलेले आहेत.”

18. The aforesaid aspect was specifically raised by the Applicant before the Disciplinary Authority as well as Appellate Authority, but it was totally ignored.

19. Even assuming for a moment that the charges against Shri Kawade and others were distinct, in that event also, the fundamental

question would remain as to whether the evidence tendered before the Enquiry Officer incriminates the Applicant and the answer is in negative in view of nature of evidence tendered before the Enquiry Officer. As stated earlier, the witnesses examined in the enquiry could not throw light on the alleged discrepancies so as to substantiate the charge framed against the Applicant. Except Shri Ghodke, two other witnesses had no personal knowledge of the material fact as they were not posted at Mohol in relevant time. Shri Ghodke was in fact one of the co-delinquent, but an attempt was made to examine him. However, he feigned total ignorance about the material particulars which are subject matter of the charge. Suffice to say, the evidence collected during the enquiry did not incriminate the Applicant. Indeed, the Presenting Officer ought to have examined Shri B.M. Naik, Deputy Director, Civil Supply and other material witnesses who were the part of Inspecting Team and inspected Godown in between 25.10.2004 to 29.10.2004. However, none of them is examined.

20. In this behalf, it would be apposite to refer the order dated 20.04.2012 issued by Government whereby D.E. against Shri Kawade was dropped. The contents of Para No.2 of the letter is material, which is as follows :-

“प्रस्तुत प्रकरणी अपर जिल्हाधिकारी, सोलापूर यांनी सहायक लेखा अधिकारी यांच्यामार्फत केलेल्या तपासणीमध्ये अन्नधान्य साठ्यात त्रुटी आढळल्याने श्री. कवडे यांच्याविरुद्ध विभागीय चौकशी सुरु करण्यात आली होती. तथापि, लेखा पर्यवेक्षक यांनी दि.३१/१२/२००४ रोजी केलेल्या गोदामाच्या लेखा परिक्षणात अन्नधान्य साठा बरोबर असल्याचा अहवाल दिला आहे. तसेच याच विषयावर अन्न, नागरी पुरवठा व ग्राहक संरक्षण विभागास जुलै २००५ च्या अधिवेशनात विधानसभा तारांकित प्रश्नाला उत्तर देताना त्या विभागाने फेर तपासणीमध्ये धान्य साठा बरोबर आढळून आला व या प्रकरणात कोणाही दोषी आढळून आले नाही, असे विधान मंडळाला उत्तर दिले आहे. तसेच या प्रकरणात कोणाहीविरुद्ध विभागीय चौकशीची कारवाई करण्याची आवश्यकता नाही, असे त्या विभागाने अभिप्राय नोंदविले आहेत. विभागीय आयुक्त, पुणे विभाग व जिल्हाधिकारी सोलापूर यांचे अहवाल तसेच अन्न नागरी पुरवठा व ग्राहक संरक्षण विभाग यांचे अभिप्राय विचारात घेउन श्री. कवडे यांच्याविरुद्ध सुरु करण्यात आलेली विभागीय चौकशीची कार्यवाही बंद करण्याचा शासनाने निर्णय घेतला आहे.”

21. Thus, what transpires from the record that despite acknowledging that there is no evidence against the Applicant strangely, the Disciplinary Authority imposed punishment on assumption stating that want of evidence happened so due to failure of the Department to bring proper evidence. If this is so, then it amounts to inflicting punishment to the

delinquent only for failure of the Department to bring proper evidence, which is certainly against the basic tenets of law. It cannot be assumed that had witnesses deposed properly, then the charges would have been found substantiated. Suffice to say, this is nothing but surmise and conjecture. Apart, for the same lapse, the Government had dropped enquiry against other superior Officials stating that in re-checking, no discrepancy was found in the stock of grain. In this set of affairs, the impugned orders of punishment deserve to be quashed.

22. The necessary corollary of aforesaid discussion leads me to conclude that the impugned order of punishment is not sustainable in law and O.A. deserves to be allowed. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned orders dated 08.08.2008, 30.03.2012 and communication dated 10.01.2014 are hereby quashed and set aside.
- (C) The consequential service benefits be released within two months from today.
- (D) No order as to costs.

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

Mumbai
Date : 17.02.2020
Dictation taken by :
S.K. Wamanse.