IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

ORIGINAL APPLICATION NO.21 OF 2016

DISTRICT : MUMBAI

Smt. Vijaya G. Rokade.)
Age : 50 Yrs, Occu.: Govt. Service,)
Medical Officer, Group-A, R/o. 203,)
Madhuban, B-Wing, Tridhan Complex,)
Subhash Nagar, Kalyan (W) – 421 301.)**...Applicant**

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Public Health Department,)
Mantralaya, Mumbai – 400 032.)

2. The Secretary to the Office of His)
Excellency the Governor of)
Maharashtra Rajabhavan,)
Malbar Hill, Mumbai – 400 006.)**...Respondents**

Mr. C.T. Chandratre, Advocate for Applicant.

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

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 10.12.2019

JUDGMENT

1. The Applicant has challenged the impugned order of punishment of withholding three increments with cumulative effect imposed by Disciplinary Authority by order dated 06.06.2011 and

confirmed by Appellate Authority by order dated 18.09.2014 invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. The Applicant is a Medical Officer (Group 'A') and at the relevant time, she was posted as Medical Officer (Dispensary), Government Central Printing Press, Charni Road, Mumbai. She was served with charge-sheet dated 19.01.2016 with letter dated 07.05.2007 on the allegation that in the period from 1992 to 1994, she purchased medicines of Rs.8,64,894/- above the financial limits, failed to handover the charge of the stock of medicine and for overwriting in the Stock Register and thereby allegedly committed breach of Rule 3 of Maharashtra Civil Services (Conduct) Rules, 1979 (hereinafter referred to as "Conduct Rules 1979' for brevity) and accordingly, charge-sheet was issued for major punishment under Rule 8 of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (hereinafter referred to as 'Discipline & Appeal Rules 1979' for brevity). She made an application for supply of requisite documents relating to the charges framed against her which are not supplied to her and also explained how the charges are irrelevant contending that she had no concern at all with the purchase of medicine and further denied to have committed any kind of misconduct. However, the Disciplinary Authority decided to continue the departmental enquiry (D.E.) and accordingly appointed Enquiry Officer. Before Enquiry Officer, the Applicant again submitted written statement of defence and pleaded not guilty.

3. The Enquiry Officer on completion of enquiry held that none of the charge is proved and submitted Enquiry Report on 25.06.2010 exonerating him. Strangely, the Disciplinary Authority simply forwarded report of Enquiry Officer by its letter dated 09.08.2010 calling upon the Applicant to submit his say on the report of Enquiry Officer though Enquiry Officer has already exonerated him from all

the charges. On receipt of it, the Applicant simply submitted reply on 23.09.2010 stating that in view of exoneration by the Enquiry Officer, the enquiry be closed. Thereafter, the Disciplinary Authority by letter dated 13.05.2010 informed to the Applicant that the Disciplinary Authority is not agreeing with the finding recorded by Enquiry Officer without recording any reasons in it and by same letter, she was called upon to submit explanation as to why major punishment should not be imposed against her. The Applicant again submitted her reply on 23.05.2011 reiterating that the charges are held not proved, and therefore, the Show Cause Notice of major punishment is illegal. Thereon, the Disciplinary Authority passed impugned order dated 06.06.2011 wherein for the first time, the Disciplinary Authority gave some reasons for disagreeing with the finding recorded by Enquiry Officer and by same order, imposed punishment of withholding three increments with cumulative effect as per Rule 5(iv) of 'Discipline & Appeal Rules 1979'. Being aggrieved by it, the Applicant had preferred an appeal before the Government which came to be dismissed by order dated 18.09.2014. On this backdrop, the Applicant has challenged the impugned order dated 06.06.2011 and confirmed by Appellate Authority by order dated 18.09.2014.

4. Shri C.T. Chandratre, learned Advocate for the Applicant assailed the impugned orders on various grounds. As regard charge of purchasing medicine of Rs.8,64,894/-, he submits that the Applicant was Medical Officer in Dispensary attached to Government Printing Press and had no concerned whatsoever with the purchase and procurement of the medicine in as much as the same falls within the authority of Manager, Government Printing Press. He has pointed out that even during enquiry also, no iota of evidence was laid to substantiate that the Applicant was entrusted with the purchase of medicine and had purchased medicine under her signature or authority. As regard Charge No.2, he submits that the duty to maintain Stock Register was of Pharmacist / Compounder as per duty

list, and therefore, the question of failure to handover stock of medicine much less misconduct for the same does not survive. In respect of Charge No.3, he submits that the Stock Register or documents allegedly tampered with was not at all produced before the Enquiry Officer despite the insistence of the Applicant to produce the same or to supply the copies to her. He, therefore, submits that this is a case of no evidence to sustain the charge and the Disciplinary Authority mechanically passed the impugned order of punishment, that too, without firstly recording tentative reasons for disagreeing with the finding recorded by the Enquiry Officer and directly issued the order of punishment contrary to Rule 9(2) of 'Discipline & Appeal Rules 1979'. He further submits that the alleged misconduct pertains to 1992 to 1994 and the Charge-sheet was issued after 12 years, and therefore, this inordinate delay and unexplained delay is also fatal to sustain the punishment. In this behalf, he placed reliance on various Judgments holding the field in the matter of D.E, which will be dealt with little later.

5. Per contra, Ms. S.P. Manchekar, learned Chief Presenting Officer though initially tried to justify the impugned orders, she was at pain to explain how the impugned orders are sustainable in law in view of submissions advanced by the learned Advocate for the Applicant referred to above and staring from the record itself.

6. To begin with, let us see the charges framed against the Applicant, which are as follows :-

> "**Charge No.1**- During the period from Nov.1992 to Dec.1994 the medicines of Rs.8,64,894/- were purchased from Govt. Medical Store, Bombay Central, Mumbai for the primary health center / dispensary attached to the Govt. Printing Press, unnecessarily and above the financial provisions available though there was no increase in the staff of Govt. Printing Press. Thus the Applicant had not observed the provisions of Bombay Financial Rules, 1959 and committed a breach of Rule No.3 of MCS (Conduct) Rules, 1979.

Charge No.2- On her transfer from Govt. Central Printing Press to Govt. Maternity Home and Dispensary at Ulhasnagar on 09.12.1994, Applicant had not handed over the whole balanced stock of medicines and thus committed a breach of Rule No.3 of MCS (Conduct) Rules, 1979.

Charge No.3- On receipt of the Audit objections, Applicant had taken out the stock register of medicine and other record, without prior permission of the manager and scribed the entries made in those record. For that reason on 07.11.1997 warning letter was issued to the Applicant. Thus the Applicant had not observed the provisions of the Rule No.98(2)(6) of Bombay Financial Rules, 1959 and committed a breach of Rule No.3 of MCS (Conduct) Rules, 1979."

7. At the very outset, it needs to be stated that the impugned orders deserve to be quashed for failure of non-compliance of Rule 9(2) of 'Discipline & Appeals Rules 1979' which *inter-alia* provides that where the Enquiry Officer exonerates the delinquent but Disciplinary Authority disagree with the findings recorded by the Enquiry Officer, then the Disciplinary Authority is under obligation to record its tentative reasons for disagreement on the articles of charge and opportunity needs to be given to the delinquent to file his representation and on receipt of representation filed, if any, further orders of punishment is required to be passed in accordance to Rules. In this behalf, Shri C.T. Chandratre, learned Advocate for the Applicant rightly referred to the decision of Hon'ble Supreme Court ***AIR 1999 SC 3734 (Yoginath D. Bagde Vs. State of Maharashtra)*** on the point of necessity of recording tentative reasons for disagreeing with the findings of Enquiry Officer. Para Nos.28, 29 and 33 are material, which are as follows :-

> *"**28**. In view of the provisions contained in the statutory Rule extracted above, it is open to the Disciplinary Authority either to agree with the findings recorded by the Inquiring Authority or disagree with those findings. If it does not agree with the findings of the Inquiring Authority, it may record its own findings. Where the Inquiring Authority has found the delinquent officer guilty of the charges framed against him and the Disciplinary Authority agrees with those findings, there would arise no difficulty. So also, if the Inquiring Authority has held the charges proved, but the Disciplinary Authority disagrees and records a finding that the charges were not established, there would arise no difficulty. Difficulties have arisen in all those cases in which the Inquiring Authority has recorded a positive finding that the charges*

were not established and the delinquent officer was recommended to be exonerated, but the Disciplinary Authority disagreed with those findings and recorded its own findings that the charges were established and the delinquent officer was liable to be punished. This difficulty relates to the question of giving an opportunity of hearing to the delinquent officer at that stage. Such an opportunity may either be provided specifically by the Rules made under Article 309 of the Constitution or the Disciplinary Authority may, of its own, provide such an opportunity. Where the Rules are in this regard silent and the Disciplinary Authority also does not give an opportunity of hearing to the delinquent officer and records findings, different from those of the Inquiring Authority that the charges were established, "an opportunity of hearing" may have to be read into the Rule by which the procedure for dealing with the Inquiring Authority's report is provided principally because it would be contrary to the principles of natural justice if a delinquent officer, who has already been held to be `not guilty' by the Inquiring Authority, is found `guilty' without being afforded an opportunity of hearing on the basis of the same evidence and material on which a finding of "not guilty" has already been recorded.

29. *We have already extracted Rule 9(2) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 which enables the Disciplinary Authority to disagree with the findings of the Inquiring Authority on any article of charge. The only requirement is that it shall record its reasoning for such disagreement. The Rule does not specifically provide that before recording its own findings, the Disciplinary Authority will give an opportunity of hearing to a delinquent officer. But the requirement of "hearing" in consonance with the principles of natural justice even at that stage has to be read into Rule 9(2) and it has to be held that before Disciplinary Authority finally disagrees with the findings of the Inquiring Authority, it would give an opportunity of hearing to the delinquent officer so that he may have the opportunity to indicate that the findings recorded by the Inquiring Authority do not suffer from any error and that there was no occasion to take a different view. The Disciplinary Authority, at the same time, has to communicate to the delinquent officer the "TENTATIVE" reasons for disagreeing with the findings of the Inquiring Authority so that the delinquent officer may further indicate that the reasons on the basis of which the Disciplinary Authority proposes to disagree with the findings recorded by the Inquiring Authority are not germane and the finding of "not guilty" already recorded by the Inquiring Authority was not liable to be interfered with.*

33. *In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the Enquiry Officer into the charges levelled against him but also at the stage at which those findings are considered by the Disciplinary Authority and the latter, namely, the Disciplinary Authority forms a tentative opinion that it does not agree with the findings recorded by the Enquiry Officer. If the findings recorded by the Enquiry Officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The*

formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the Disciplinary Authority has proposed to disagree with the findings of the Enquiry Officer. This is in consonance with the requirement of Article 311(2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the Disciplinary Authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the Disciplinary Authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away by any legislative enactment or Service Rule including Rules made under Article 309 of the Constitution."

8. He further referred to ***(2006) 9 SCC Lav Nigam Vs. Chairman & MD, ITI Ltd. & Anr.)*** where following the decision in ***Yoginath Bagde's*** case (cited supra), the Hon'ble Supreme Court reiterated that where the Enquiry Officer has exonerated the employee and the Disciplinary Authority takes a different view, then the opportunity of hearing with tentative conclusions needs to be given to the delinquent and it is only after giving opportunity, the Disciplinary Authority can arrive the finding of guilt.

9. Whereas, in the present case, without recording any such tentative reasons, as required in law, surprisingly, the Disciplinary Authority firstly simply forwarded report of Enquiry Officer to the Applicant and called his explanation though in fact Enquiry Officer has exonerated the Applicant. It is that stage only, the Disciplinary Authority was required to record tentative reasons with Show Cause Notice to the Applicant as to why the tentative reasons recorded by the Disciplinary Authority should not be made absolute. What happened in the present case, the Disciplinary Authority directly issued order dated 06.11.2011 holding the Applicant guilty and

imposing punishment and in that order only, same reasons for name sake, which in fact, not supported by the evidence are recorded. As such, by common order, some tentative reasons were recorded and by the same order, the punishment of withholding of increment with cumulative effect was imposed. Needless to mention that, this is contrary to the decision of Hon'ble Supreme Court in ***Yoginath Bagde's*** case as well as Rule 9(2) of 'Discipline & Appeal Rules 1979' and this aspect alone is enough to quash the impugned orders. Here, let us see Rule 9(2) of 'Discipline & Appeal Rules 1979, which is as under :-

> "**9(2)** The disciplinary authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the inquiring authority, a copy of the report of the inquiring authority together with its own tentative reasons for disagreement, if any, with the findings of inquiring authority on any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority within fifteen days, irrespective of whether the report is [favourable or not to the said Government servant]."

10. The learned CPO having realized fatal defect for non-compliance of Rule 9(2) of 'Discipline & Appeal Rules 1979' tried to contend that the matter be remanded to the Disciplinary Authority for taking remedial measures and to pass order afresh in accordance to law. This submission normally would have been accepted, if it was the only lacuna in the matter. As rightly pointed out by the learned Advocate for the Applicant that, even on merit also, the finding recorded by the Disciplinary Authority is perverse, and therefore, the matter is required to be decided on merit rather than remitting the matter to the Disciplinary Authority. I find merit in his submission.

11. **As to Charge No.1** :- Now, let us see whether the charge No.1 framed against the Applicant is supported by the evidence. Charge No. 1 was to the effect that in between November, 1992 to December, 1994, the Applicant had purchased medicines of Rs.8,64,894/- from

Government Store, Mumbai Central for dispensary unnecessarily and above the financial provisions available and thereby committed misconduct. Thus, the charge pertains to purchase of medicines beyond financial limit and unnecessary for the running of dispensary. Whereas, the Applicant come with the specific defence right from the filing defence statement before Enquiry Officer that she was serving as a Medical Officer in dispensary attached to the Government Press and has no concern whatsoever with the purchase or procurement of medicines and it falls within the competence and authority of Manager. She only used to send requisition for the medicines. This being the position, it was incumbent on the part of Department to produce evidence in the form of medical bills, orders, payment orders allegedly issued by the Applicant. However, in this behalf, there is absolutely no iota of evidence. During the course of hearing, a specific query was raised by the Tribunal to the learned C.P.O. to show the orders allegedly passed by the Applicant or bills of medicines or payment order to pinpoint that it is the Applicant who had purchased medicines of Rs.8,64,894/-. However, she was not able to point out any such material from the enquiry report or evidence laid before the Enquiry Officer. All that she stated that the charge was framed in view of requisition made by the Applicant. Thus, it seems that only on requisition made by the Applicant, the charge of purchase of medicines was framed against the Applicant without bothering to see as to who was the competent authority to purchase the medicines and who purchased it. It may be noted that the Enquiry Officer has recorded specific finding that whatever purchase of medicines was made, it was at the level of Manager. In view of these specific findings recorded by the Enquiry Officer, it was incumbent on the part of Disciplinary Authority to see whether there was any such evidence to show that the purchase was made by the Applicant, so as to disagree with the finding of Enquiry Officer.

12. However, all that, the Disciplinary Authority observed that, *prima-facie*, the Applicant had purchased medicines of Rs.8,64,894/- above the financial limit. Surprisingly, except recording the observation that, *prima-facie*, the Applicant had purchased the medicines in excess of financial approval, no evidence or material was referred to much less discussed in support of such conclusion. Needless to mention, when the Enquiry Officer has recorded negative finding, it was open to Disciplinary Authority to disagree with the opinion of Enquiry Officer but it needs to record its own finding provided it is supported by evidence or some material. Indeed, the Disciplinary Authority has to record tentative reasons for disagreeing with the finding of Enquiry Officer and opportunity of hearing or Show Cause Notice needs to be given to the delinquent and only on receipt of explanation or reply of the delinquent, further steps needs to be taken. Suffice to note that the Disciplinary Authority did not advert to any evidence in support of its finding. Apart, what Disciplinary Authority held that, *prima-facie*, the Applicant had purchased the medicines of Rs.8,64,894/- in excess of financial limit. Needless to mention that, in law, it can hardly be termed as a finding in the enquiry on merit. When the Disciplinary Authority was dealing with the matter, it needs to record its specific finding on merit and, *prima-facie*, consideration can hardly take place of proof on merit. This rather shows total ignorance of basic tenets of law.

13. In appeal also, the Applicant has raised the specific issue that she had no concern with the purchase but here again, the Appellate Authority reiterated the order of Disciplinary Authority without making any discussion on the point of purchase of medicines above financial limit. The Appellate Authority did not bother to see the evidence laid before the Enquiry Officer about sustainability of finding recorded by the Disciplinary Authority in view of challenge raised by the Applicant and simply stated that the Appellate Authority is in agreement with the finding recorded by the Disciplinary Authority and

maintained the punishment. In this behalf, as regard the responsibility and obligation on the part of Appellate Authority, the learned Advocate for the Applicant referred to the Judgment ***(2007) 1 SCC (L & S) 388 (Director [Marketing], Indian Oil Corporation Ltd. & Anr. Vs. Santosh Kumar).*** In this matter, while dealing with the order passed by Appellate Authority, it was found that it reflects total non-application of mind and the Appellate Authority had passed order by simply adopting the language employed by disciplinary authority thereby refusing to interfere with dismissal order. The Hon'ble Supreme Court, therefore, held that the order of Appellate Authority is vitiated by non-application of mind and the matter was remitted to Disciplinary Authority for decision afresh.

14. As such, this is a case where the Applicant is held guilty for the charge of purchasing medicines of Rs.8,64,894/- without any evidence to that effect. Primary evidence that the Applicant was entrusted with the purchase or procurement of medicines and it is the Applicant who purchased the medicines is completely missing. In absence of this primary evidence, the charge holding the Applicant guilty can hardly be sustained in law and facts.

15. **As to Charge No.2** :- The Charge No.2 relates to alleged misconduct of failure to handover the stock of medicines on 09.12.1994. The Applicant has raised specific defence that she was working as Medical Officer and the responsibility of maintenance of stock of medicines was of Pharmacist / Compounder. She has also produced the duty list (Page No.91 of P.B.) which does not disclose that the maintenance of Stock Register was entrusted to the Applicant. Indeed, the duty list shows that the said responsibility was of Pharmacist / Compounder. However, surprisingly, here again the Disciplinary Authority held the Applicant guilty without adverting to any such material in support of its finding. Indeed, the order passed by the Disciplinary Authority dated 06.11.2011 is totally silent as to

on what basis, it held the Applicant guilty for Charge No.2. All that, the Disciplinary Authority held that, at the time of transfer, the Applicant failed to handover the stock to her successor without examining as to whether it falls within her duties and responsibilities. As such, the finding on Charge No.2 is also unsustainable.

16. **As to Charge No.3** :- The position in respect of Charge No.3 is also not different. As per Charge No.3, the Applicant allegedly made some overwriting and tampered with the Stock Register and thereby committed misconduct. If this was so, then that Register allegedly tampered was the primary evidence, which was required to be produced by the Enquiry Officer. However, no such evidence was laid. Indeed, the Applicant in the very beginning of the enquiry requested for supply of copies of documents allegedly tampered, but not supplied which was necessary to prepare defence. In view of specific denial of the Applicant, it was incumbent to produce the primary evidence in the nature of documents and to prove that it was tampered by the Applicant by examining the witnesses. However, surprisingly, no such evidence was laid. Rather material document allegedly tampered has not seen the day of light. Here again, the Disciplinary Authority while disagreeing with the finding of the Enquiry Officer did not bother to consider this aspect. It mechanically held the Applicant guilty. Indeed, all that the Disciplinary Authority held that the Enquiry Officer appointed on contract basis did not asses the evidence in appropriate manner. No doubt, if the Enquiry Officer did not assess the evidence laid before it and Disciplinary Authority is in disagreement, then it is always open to the Disciplinary Authority to take different view, but for that matter, the Disciplinary Authority is required to see whether there is any such evidence to take contrary view which was ignored by the Enquiry Officer. In other words, the duty is cast upon the Disciplinary Authority to look into the evidence while disagreeing with the Enquiry Officer and mere saying that the Enquiry Officer did not

appreciate the evidence properly is hardly enough. Resultantly, the finding on Charge No.3 is also not tenable.

17. In view of aforesaid discussion, irresistible conclusion is that the finding of the Disciplinary Authority and confirmed by the Appellate Authority holding the Applicant guilty and consequent punishment is not supported by any kind of evidence much less reliable, and therefore, such finding definitely falls within the category of perverse. The decision arrived is such that no reasonable person would act upon it. This being the position, the impugned orders deserve to be quashed. In this behalf, reference can be made to the decision of Hon'ble Supreme Court in ***2013 AIR SCW 3338 (S.R. Tewari Vs. Union of India & Anr.)*** wherein in Para No.24 held as follows :-

> *"**24.** The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant /inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality. If a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with. (Vide: Rajinder Kumar Kindra v. Delhi Administration, AIR 1984 SC 1805; Kuldeep Singh v. Commissioner of Police & Ors., AIR 1999 SC 677; Gamini Bala Koteswara Rao & Ors. v. State of Andhra Pradesh thr. Secretary, AIR 2010 SC 589; and Babu v. State of Kerala, (2010) 9 SCC 189).*
>
> *Hence, where there is evidence of malpractice, gross irregularity or illegality, interference is permissible."*

18. As regard the scope of Tribunal in Disciplinary Enquiry, the learned Advocate for the Applicant referred to the decision of Hon'ble Supreme Court in ***(1995) 6 SCC (Union of India and Anr. Vs. B.C. Chaturvedi)*** wherein the Hon'ble Supreme Court held that the Tribunal in its power of judicial review does not act as appellate

authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. However, the 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 inquiry 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.

19. Furthermore, in view of non-supply of necessary documents to the Applicant as well as non-production of same before Enquiry Officer viz. documents allegedly tampered with by the Applicant and the copies of purchase orders of medicines, etc., the same is also fatal to the Respondents as held by Hon'ble Supreme Court in ***(2010) 1 SCC (L & S) 674 (State of Uttar Pradesh & Ors. Vs. Saroj Kumar Sinha)*** wherein having found that documents necessary and relied by the Department having not been supplied without any reasonable explanation, it was held that it amounts to denial of reasonable opportunity to defend in the enquiry and decision of Hon'ble High Court quashing the order of removal from service was upheld.

20. Now comes to the question of delay in initiating the DE against the Applicant. She was charged for misconduct pertain to the years 1992-1994 whereas charge-sheet was issued after 12 years i.e. in 2007. The Enquiry Officer submitted report exonerating the Applicant in 2010 whereas the Disciplinary Authority imposed punishment by order dated 06.06.2011. As such, in the first place, there is substantial inordinate and unexplained delay for issuing charge-sheet after 12 years and secondly, it took another four years for passing final order in D.E. There is absolutely no explanation much less satisfactory as to why the D.E. was not initiated at earliest point of

time. True, the delay itself cannot be the ground to quash the punishment imposed in D.E. and Tribunal needs 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 proceeding should be allowed to continue. In the present case, there is no charge of misappropriation of medicines or Government money. The charge pertain to purchase of excess medicines above the financial limit. However, it is explicit that the Disciplinary Authority was not serious in initiating the D.E. and it was taken up after lapse of 12 years which certainly has caused prejudice to the Applicant to prepare the defence. There is absolutely no explanation for this inordinate delay of 12 years. Apart, the charges cannot be said of such serious nature, so as to condone the delay of 12 years in initiating the D.E. Suffice to say, the delay caused in initiating the D.E. is also fatal to the Respondents.

21. The learned Advocate for the Applicant in this behalf referred to decision of Hon'ble Supreme Court in ***1998 SCC (L & S) 1044 (State of A.P. Vs. N. Radhakishan)*** wherein in Para Nos.19, 20 and 21 are as under :-

> *"**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 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 weight 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 are 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 is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations.

20. *In the present case we find that without any reference to records merely on the report of the Director General, Anti-Corruption Bureau, charges were framed against the respondent and ten others, all in verbatim and without particularizing the role played by each of the officers charged. There were four charges against the respondent. With three of them he was not concerned. He offered explanation regarding the fourth charge but the disciplinary authority did not examine the same nor did it choose to appoint any inquiry officer even assuming that action was validly being initiated under 1991 Rules. There is no explanation whatsoever for delay in concluding the inquiry proceedings all these years. The case depended on records of the Department only and Director General, Anti-Corruption bureau had pointed out that no witnesses had been examined before he gave his report. The Inquiry Officers, who had been appointed on after the other, had just to examine the records to see if the alleged deviations and constructions were illegal and unauthorised and then as to who was responsible for condoning or approving the same against the bye-laws. It is nobody's case that respondent at any stage tried to obstruct or delay the inquiry proceedings. The Tribunal rightly did not accept the explanations of the state as to why delay occurred. In fact there was hardly any explanation worth consideration. In the circumstances the Tribunal was justified in quashing the charge memo dated July 31, 1995 and directing the state to promote the respondent as per recommendation of the DPC ignoring memos dated October 27, 1995 and June 1, 1996. The Tribunal rightly did not quash these two later memos.*

21. *Accordingly we do not find any merit in the appeal. It is dismissed with costs."*

22. Reference is also made to ***2013 AIR SCW 2573 (Anant R. Kulkarni Vs. Y.P. Education Society & Ors.)*** wherein the Hon'ble Supreme Court in Para No.8 held 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."

23. In nutshell, the finding recorded by Disciplinary Authority and confirmed by Appellate Authority suffers from serious legal infirmities rendering the impugned orders unsustainable in law. Consequently, the impugned orders deserve to be quashed. Hence, the following order.

O R D E R

(A) The Original Application is allowed.

(B) The impugned order of Disciplinary Authority dated 06.06.2011 and of Appellate Authority dated 18.09.2014 are quashed and set aside.

(C) The consequential service benefits be released to the Applicant within a month from today.

(D) No order as to costs.

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

Mumbai
Date : 10.12.2019
Dictation taken by :
S.K. Wamanse.
D:\SANJAY WAMANSE\JUDGMENTS\2019\12 December, 2019\O.A.21.16.w.12.2019.Punishment.doc