

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.246 OF 2017

DISTRICT : SOLAPUR

Shri Gunendra K. Akade.)
Age : 47 Yrs., Occu.: Senior Clerk)
[Under Suspension] in Government)
Industrial Training Institute, A/p. Mandrup)
Tal.: South Solapur, District : Solapur,)
R/o. Kalindi Nivas, Gurukripa C.H.S. Ltd,)
Ganesh Nagar, Pandharpur,)
District : Solapur.)...**Applicant**

Versus

1. The Joint Director of Vocational)
Education & Training, Regional)
Office, Ghole Road, Pune - 5.)
2. The Director.)
Vocational Education and Training)
Directorate, M.S, Mumbai and)
having Office at 3, Mahapalika Marg,)
P.B. No.10036, Mumbai - 1.)
3. The Principal.)
Government Industrial Training)
Institute, A/p. Mandrup,)
Tal.: South Solapur, Dist.: Solapur.)
4. The State of Maharashtra.)
Through Principal Secretary,)
Higher & Technical Education Dept.,)
Mantralaya, Mumbai - 400 032.)
5. The State of Maharashtra.)
Through Principal Secretary,)

Skill Development & Entrepreneurship)
Dept., Mantralaya, Mumbai – 400 032.)...**Respondents**

Mr. A.V. Bandiwadekar, Advocate for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 26.11.2019

JUDGMENT

1. The challenge is to the impugned order dated 09.06.2016 passed by Appellate Authority imposing punishment of reversion consequent to departmental enquiry (D.E.) initiated against the Applicant.

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

The Applicant at the relevant time was serving as Senior Clerk at Government Industrial Training Institute, Mandrup, District Solapur. He was holding additional charge of Accountant-cum-Cashier. In between October, 2010 to February, 2012, he allegedly misappropriated sum of Rs.1,36,183/-. He was suspended on 15.05.2013. Besides, the FIR was also registered against him for the offence under Sections 409, 406, 465 and 471 of Indian Penal Code. The charge-sheet was issued against him for breach of Rule 3(1)(2) and (3) of Maharashtra Civil Services (Conduct) Rules, 1979 (hereinafter referred to as 'Conduct Rules 1979' for brevity) for major punishment under Rule 8 of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (hereinafter referred to as 'Discipline & Appeal Rules 1979' for brevity). Accordingly, the Enquiry Officer conducted enquiry and held the Applicant guilty. The Respondent No.1 – Joint Director of Vocational Education and Training by order dated

20.10.2015 imposed punishment of reduction to a lower time scale of pay in terms of Rule 5(vi) of 'Discipline & Appeal Rules 1979' and also directed for recovery of Rs.1,36,183/- i.e. loss caused to the Government. Being aggrieved by it, the Applicant had preferred an appeal before Respondent No.2 – Director, Vocational Education and Training, Directorate, M.S. being Appellate Authority. The appeal was heard on 04.04.2016. The Respondent No.2 by order dated 9th June, 2016 maintained the order of recovery of Rs.1,36,183/- but modified the order of reduction to lower time scale of pay and imposed punishment of reversion without further details regarding period of reversion. Besides, by order dated 9th June, 2016, the Appellate Authority directed that the Applicant be reinstated in service only on deposit of Rs.1,36,183/- with the Government. Being aggrieved by this order, the Applicant has filed the present O.A. challenging illegality of order of Appellate Authority.

3. Shri A.V. Bandiwadekar, learned Advocate for the Applicant assailed the impugned order mainly on the following grounds :-

- (a) The order passed by Appellate Authority is not only perfunctory but passed in a most casual manner without giving any reasons and as such unsustainable in law.
- (b) There is absolutely no application of mind to the grounds raised by the Applicant in appeal memo.
- (c) The Appellate Authority in modified order, indeed, imposed severe punishment than the punishment imposed by the Disciplinary Authority without giving any opportunity on the proposed severe punishment and as such it is ex-facie unsustainable in law.
- (d) The order passed by the Appellate Authority has effect of permanent bar for promotion in future, as the order is silent about the period of reversion.

- (e) The condition of deposit of Rs.1,36,183/- as a condition precedent for reinstatement is unknown to law, as a result of which, the Applicant was debarred for reinstatement for a period of nine months which caused serious prejudice to him.

4. Per contra, Shri A.J. Chougule, learned Presenting Officer sought to justify the impugned order contending that the charges of misappropriation of Rs.1,36,183/- was sufficiently established in D.E. and the fact of drawing of excess amount from the Bank has been admitted by the Applicant in his final written submission dated 29.09.2014. As such, according to him, the finding holding the Applicant guilty cannot be disturbed under the exercise of judicial review which has very limited scope of interference. As regard modification of punishment, he admits that the modified order is silent about the period of reversion, but sought to contend that the Department will consider the Applicant for promotion in future, if found fit for promotion. He further sought to contend that the modified order of punishment cannot be termed mere severe punishment than the punishment imposed by Disciplinary Authority. In alternative, he submits that the matter be remanded back to Appellate Authority for decision afresh.

5. Now, let us see the order passed by the Disciplinary Authority imposing punishment as well as modified order passed by the Appellate Authority. The punishment imposed by the Disciplinary Authority dated 20th October, 2015 is as follows :-

“त्याअर्थी, महाराष्ट्र नागरी सेवा (वर्तणूक) नियम १९७९ मधील ५(१)(तीन) अन्वये निम्नस्वाक्षरीत याद्वारे उक्त श्री. गुणेंद्र कुंडलीक आकाडे, वरिष्ठ लिपीक, औद्योगिक प्रशिक्षण संस्था, मंद्रुप, जि. सोलापुर यांचेकडून शासनाचे झालेले नुकसान रक्कम रु.१,३६,१८३/- (अक्षरी रक्कम रुपये एक लाख छत्तीस हजार एकशे त्र्याऐंशी फक्त) वसुल करण्यात यावेत व महाराष्ट्र नागरी सेवा (वर्तणूक) नियम १९७९ मधील ५(१)(सहा) अन्वये किमान वेतनावर पदावनत करणे असे आदेशित करित आहे.”

Whereas, the order passed by the Appellate Authority on 09.06.2016 is as follows :-

“सहसंचालक, प्रादेशिक कार्यालय, पुणे यांनी जा.क्र.अ-२/आस्था/२०१५/७९८५ दिनांक २०/१०/२०१५ अन्वये महाराष्ट्र नागरी सेवा (शिस्त व अपिल) १९७९ मधील ५(१)(सहा) अन्वये किमान वेतनावर पदावनत करण्याची देण्यात आलेल्या शिक्षेच्या विरोधात श्री. गुणेंद्र कुंडलिक आकाडे, वरिष्ठ लिपिक सध्या निलंबित यांनी दिनांक १८/१२/२०१५ रोजी केलेल्या अपिलाची सुनावणी दिनांक ०४.०४.२०१६ रोजी संचालनालयात घेऊन त्याबाबत खालीलप्रमाणे निर्णय देण्यात आलेला आहे.

अपचारी यांनी एक शासकिय कर्मचारी म्हणून केलेल्या गैरवर्तनाबाबत त्यांचे विरुद्ध विभागीय चौकशी नियम १९९९ अन्वये चौकशी अहवालामध्ये झालेले दोषारोपानुसार शासनाचे झालेले नुकसान रक्कम रु.१,३६,१८३/- (अक्षरी रक्कम रुपये एक लाख छत्तीस हजार एकशे त्र्याऐंशी फक्त) वसूल करण्याचे आदेश कायम करण्याचा तसेच महाराष्ट्र नागरी सेवा (शिस्त व अपिल) १९७९ मधील ५(१)(सहा) अन्वये किमान वेतनावर पदावनत करण्याऐवजी फक्त पदावनत करण्याची शिक्षा कायम करण्याचा आदेश देण्यात येत आहे.

सहसंचालक, व्यवसाय शिक्षण व प्रशिक्षण कार्यालय, पुणे यांनी आपल्यास्तरावर श्री. गुणेंद्र कुंडलीक आकाडे निलंबित वरिष्ठ लिपिक यांचेकडून शासनाचे झालेले नुकसान रक्कम १,३६,१८३/- (अक्षरी रक्कम रुपये एक लाख छत्तीस हजार एकशे त्र्याऐंशी फक्त) भरणा करण्याची कार्यवाही झाल्यानंतर पदस्थापना करून नियमानुसार आवश्यक ती सर्व कार्यवाही करावी व केलेल्या कार्यवाहीचा अहवाल सादर करावा.”

6. It is thus explicit from the order passed by the Appellate Authority that not a single ground raised by the Applicant in his Appeal Memo is referred to, much less discussed by the Appellate Authority. There is absolutely not a single word disclosing reasons for not accepting the grounds raised by the Applicant in appeal memo. As such, there is no application of mind and without giving any reasons, even for name sake, the Appellate Authority maintained the finding of guilt recorded by the Disciplinary Authority. In this behalf, Shri Bandiwadekar, learned Advocate rightly referred to the Judgment in **2004(2) Mh.LJ 532 (Unique Co-ordinators Vs. Union of India & Ors.)** wherein the Hon'ble High Court held that the appellate order confirming the order appealed against it may not touch each and every contention of the Applicant nonetheless application of mind must be demonstrated. In Para No.6, the Hon'ble High Court held as follows :-

“6. It is needless to mention that the Appellate Authority is expected to deal with each and every contention of the appellant, in short if the order is an order of confirmation of the order passed by the authorities below. In the case of order of confirmation, it is not necessary to pass a detailed order, but atleast it must demonstrate application of mind on

the part of the authority, especially when the order can be a subject matter of challenge before the higher forum. Recording of reasons is necessary in order to enable the litigant to know the reasons which weighed in the mind of the Court or authority in determining the question and also enable the higher Court to know the reasons. See (V.V. Shroff v. New Education Institute) 2, A.I.R. 1986 S.C.2105. The reasons act as a live link between the evidence on record and the findings recorded on the basis of such evidence. It inspires the confidence of the litigant in the institution of courts.”

The Hon'ble High Court accordingly remitted the matter back to the Appellate Authority for decision afresh.

7. As such, on this ground alone, the impugned order passed by Appellate Authority is liable to be set aside and matter needs to be remitted back to the Appellate Authority for decision afresh. Apart, it explicit that the appellate order is not in confirmation with the 'Discipline & Appeal Rules, 1979', and therefore, there is no alternative except to remit back the matter to the Appellate Authority.

8. As rightly pointed out by learned Advocate for the Applicant while modifying the order of Disciplinary Authority, the Appellate Authority passed the order of reversion in place of reduction in lower time scale, but while doing so, it failed to specify the period of reversion, as contemplated under Rule 5, Clause (VI) of 'Disciplinary & Appeal Rules 1979', which is as follows :-

“(vi) Reduction to a lower time-scale of pay, grade, post or service which shall ordinarily be a bar to the promotion of a Government servant to the time-scale of pay, grade, post, or service from which he was reduced, with or without further directions regarding conditions or restoration to the time-scale of pay, grade, post or service from which the Government servant was reduced and his seniority and pay on such restoration to that time-scale of pay, grade, post or service.”

9. Thus, it was necessary to specify the period of reversion. In the present matter, the Appellate Authority did not specify the period of reversion, which is required to be specified.

10. At this juncture, it would be apposite to refer Departmental Enquiries Manual about the order to be passed under Rule 5, Clause (6) of 'Disciplinary & Appeal Rules 1979', which is as under :-

“३.६ कनिष्ठ सेवेत, श्रेणीत किंवा पदांवर, किंवा कनिष्ठ समयश्रेणीत पदावनती :-

- (१) कनिष्ठ सेवेत, श्रेणीत, पदावर किंवा कनिष्ठ समयश्रेणी पदावनत करण्याबाबतची शिक्षा देणा-या आदेशात पुढील गोष्टी अंतर्भूत करण्यात आल्या पाहिजेत :-
- (अ) ज्या कालावधीसाठी पदावनती अंमलात ठेवावयाची असेल तो कालावधी, असा कालावधी पूर्ण होण्यापूर्वी रजेवर व्यतीत केलेले कोणतेही कालांतर वगळून असेल असे स्पष्ट विधान;
- (ब) पदावनती विनिर्दिष्ट कालावधीसाठी आहे की कायमची आहे, याबाबत स्पष्ट विधान ;
- (क) पदावनती विनिर्दिष्ट कालावधीसाठी असेल तेव्हा, मुळ पदावर पुनः स्थापित केल्यानंतर, पदावनतीच्या कालावधीमुळे भावी काळातील वेतनवाढी पुढे ढकलल्या जातील किंवा काय, याबाबत स्पष्ट विधान.’”

Suffice to say, the impugned order is too vague and do not fulfill the requirement of provisions.

11. Furthermore, the Appellate Authority put totally unsustainable condition in the order to the effect that the Applicant should not be reinstated unless amount of Rs.1,36,183/- i.e. loss caused to the Government is deposited. Because of this condition, the Applicant was prevented from reinstatement in service for a period of nine months. As per practice and settled position, the said amount could have been recovered from the salary of the Applicant on his immediate reinstatement.

12. As such, *ex-facia* the order passed by Appellate Authority is not in consonance with the provisions of 'Disciplinary & Appeal Rules 1979'. It does not fulfill the parameters to be followed while imposing such punishment. Resultantly, the appellate order being vague without any reasons for conclusion is liable to be set aside. The Tribunal is conscious of the fact that in judicial review, the scope of interference in the matter of punishment imposed in D.E. is limited. However, where the order exhibits total non-application of mind and

non-observance parameters laid down in the Rules, which caused serious prejudice to the Applicant employee, then such order is liable to be set aside with direction to the Appellate Authority to pass order afresh.

13. The totality of aforesaid discussion leads me to sum-up that the order of Appellate Authority is not sustainable in law and liable to be set aside. The matter is required to be remitted back to the Appellate Authority to decide the appeal afresh in the light of observation made in the order and in accordance to Rules. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned order dated 09.06.2016 is quashed and set aside.
- (C) The matter is remitted back to the Appellate Authority i.e. Director, Vocational Education and Training Directorate, M.S, Mumbai for decision afresh within two months from today.
- (D) The Appellate Authority shall hear an appeal afresh and shall pass appropriate order in accordance to Rules within two months from today.
- (E) No order as to costs.

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

Mumbai
Date : 26.11.2019
Dictation taken by :
S.K. Wamanse.