

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.273 OF 2016
(Subject : Departmental Enquiry)

Shri Arun Dinakar Sathe,)
(Retired Assistant Commissioner of Sales Tax),)
Near Teacher's Colony, 36/5, Fifth Floor,)
Indra Prasad Society, Bandra East, Mumbai.)
.... Applicant

Versus

1) State of Maharashtra)
Through its Principal Secretary.)
Public Health Department, G.T. Hospital,)
Complex Building, 10th floor,)
Mantralaya, Mumbai 400 001.)
2) Additional Chief Secretary,)
Finance Department, Madam Cama Road,)
Mantralaya, Mumbai 400 032.)
....Respondents

Shri R.M. Kolge, the learned Advocate for the Applicant.

Shri A.J. Chougule, the learned Presenting Officer for the Respondents.

CORAM : SHRI B.P. PATIL, MEMBER (J)
SHRI P.N. DIXIT, MEMBER (A)

DATE : 28.11.2018.

PER : SHRI B.P. PATIL, MEMBER (J)

J U D G M E N T

1. Applicant has challenged the order dated 22.02.2013 issued by the Respondent No.1 and prayed to quash and set aside the same by filing present O.A. Applicant has also prayed to direct the Respondent No.2 to pay all the retirement benefits including pensionary benefits, gratuity to be paid to him w.e.f. 31.12.2008 with consequential benefits and to treat his suspension period from 11.11.2004 to 06.10.2008 as duty period for the purpose of fixation of revised pay.

2. The Applicant was selected by Maharashtra Public Service Commission and appointed as Sales Tax Inspector on 06.11.1998 in the Sales Tax Department of Government of Maharashtra. He was promoted to the post of Sales Tax Officer, Class-II w.e.f. 22.09.1982. Thereafter he was further promoted to the post of Sales Tax Officer, Class – I in June 1993. Thereafter he was sent on deputation on the post of Private Secretary in the office of Minister of State for Public Health and family Welfare Department, Mantralaya, Mumbai. He was discharging his duty on the said post from 01.12.1999 to 03.04.2001. His service record was unblemished and to the satisfaction of his superior.

3. While working as Private Secretary in the office of Minister of State for Public Health and Family Welfare Department, Mantralaya, it was alleged that he accepted money illegally from some candidates by promising them to give appointment on the Class III and Class IV posts and cheated them. Because of the said allegations a Departmental Enquiry was initiated against him and others. The Applicant was repatriated to his Parent Department i.e. Sales Tax Department and he joined his duty in Parent Department w.e.f. 04.04.2001. Respondent No.2 being his appointing authority and disciplinary authority placed him under suspension by order dated 11.11.2004 and the Departmental Enquiry was contemplated against him. The suspension order was served on

him on 19.11.2004. Respondent No.2 initiated Departmental Enquiry against him into the charge of misconduct allegedly committed by him and charge-sheet was served on him vide order dated 11.11.2004. The Applicant has submitted his written statement of defence on 26.04.2005 and denied charges leveled against him.

4. Respondent No.2 appointed Regional Divisional Enquiry Officer, Kokan Division, Kokan Bhavan, Navi Mumbai, C.B.D. Belapur as Enquiry Officer by order dated 16.06.2005. Thereafter on 14.02.2006 Respondent No.1 made appointment of enquiry officer. The Respondent No.2 by order dated 17.04.2006 cancelled its earlier order dated 16.06.2005 appointing enquiry officer, on the ground that Respondent No.1 has decided to conduct the common enquiry against the applicant and other delinquents. Respondent No.1 then appointed Contractual Enquiry Officer viz. Shri L.N. Bagul, Retired Deputy Secretary as Enquiry Officer by order dated 26.02.2008. Meanwhile the suspension of the Applicant has been revoked by Respondent No.2 and he was reinstated in the service by order dated 06.10.2008. Thereafter Applicant was retired on 31.12.2008 on superannuation.

5. Thereafter Respondent No.1 appointed one Shri R.S. Kanikar, Retired Executive Engineer as Contractual Enquiry Officer vide order dated 13.03.2012. But again Respondent No.1 cancelled the said order and appointed the Regional Divisional Enquiry Officer, Kokan Division, Kokan Bhavan, Navi Mumbai, C.B.D. Belapur as Enquiry Officer by impugned order dated 22.02.2013.

6. It is contention of the Applicant that the appointment of Regional Divisional Enquiry Officer as enquiry officer is without any authority and therefore it is illegal. It is his contention that Respondent No.2 is his appointing and disciplinary authority and therefore Respondent No.2 is the competent to appoint an enquiry officer and Respondent No.1 has no authority to appoint Enquiry officer in the D.E. Therefore, the impugned order is illegal. It is further

contention of the applicant that on his retirement, enquiry lapses but the Respondent No.1 continued it illegally and therefore on that ground also the impugned order appointing Enquiry Officer is illegal. Therefore, Applicant challenged the impugned order dated 22.02.2013 by filing the present O.A.

7. It is further contended by the Applicant that inspite of his retirement w.e.f. 31.12.2008 on attaining superannuation he has not received retirement benefits including pensionary benefits and gratuity amount. Therefore he sought direction to the Respondent No.2 to pay all the retirement benefits to him. It is further contended by the Applicant that he was under suspension w.e.f. 11.11.2004 to 06.10.2008. But the said period was not regularized after his reinstatement in the service. Therefore, he prayed to direct the Respondent No.2 to treat his suspension period as duty period.

8. Respondent No.1 resisted the contentions of the Applicant by filing affidavit-in-reply. He has admitted the fact that the applicant was placed under suspension by the Respondent No.2 by order dated 11.11.2004 and a departmental enquiry has been initiated against him and charge-sheet was served on him on 11.11.2004 for the misconduct committed by the applicant when he was serving as Private Secretary, in the office of Minister of State for Public Health and Family Welfare Department, during the period from 01.12.1999 to 03.04.2001. It is his contentions that the Respondent No.2 has appointed Regional Divisional Enquiry Officer, Kokan Division, Kokan Bhavan, Navi Mumbai, C.B.D. Belapur by order dated 16.06.2005, but later on Respondent No.1 decided to appoint Regional Divisional Enquiry Officer, Kokan Division, Kokan Bhavan, Navi Mumbai, C.B.D. Belapur as Enquiry Officer as the another delinquent. Shri Krishna B. was serving in the Health Department and all the relevant documents i.e. preliminary enquiry report including statement of witnesses were available in the office of Respondent No.1. It was decided to conduct common disciplinary enquiry as per Maharashtra Civil Services

(Discipline and Appeal) Rules 1979. Thereafter because of change in Government policy in respect of appointment of enquiry officer, Contractual Enquiry Officer was appointed by Respondent No.1. Again Government changed its policy. Therefore, the enquiry was handed over to Regional Divisional Enquiry Officer, Kokan Division, Kokan Bhavan, Navi Mumbai, C.B.D. Belapur. It has not disputed the fact that the Additional Chief Secretary, Finance Department i.e Respondent No.2 is appointing and disciplinary authority of the Applicant. Respondent No.1 is inferior in the rank than the Respondent No.2. But it is contended by it that Respondent No.2 is not precluded from initiating Departmental Enquiry against the Applicant as he has committed misconduct when he was working on deputation as Private Secretary in the office of Minister of State for Public Health and Family Welfare Department. It is contended by it that Respondent No.1 is the competent authority to initiate Departmental Enquiry and to appoint Enquiry Officer. It is contended that the enquiry officer conducted enquiry in the Department Enquiry and submit his report to Respondent No.1. Report along with that necessary record was sent to Respondent No.2 on 13.04.2016 for taking further decision in respect of imposition of penalty on the Applicant on these grounds the respondent No.2 prayed to dismiss the O.A.

9. Respondent No.2 resisted the contention of the Applicant by filing his affidavit-in-reply. He has not disputed the fact that Applicant was appointed in Sales Tax Department and was deputed as Private Secretary in the office of Minister of State for Public Health and Family Welfare Department, Mantralaya. He has also not disputed the fact that the applicant was served with a charge-sheet and enquiry officers were appointed in the D.E. from time to time. He has contended that as per provisions of Maharashtra Civil Services (Discipline and Appeal) Rules 1979, and paragraph No.2.2 of Manual of Departmental enquiry, disciplinary cases relating to Gazetted Officers on deputation to other departments should be dealt with by the department to

which the officer was on deputation at the time of default or where he is serving at the time, the departmental action is taken against him.

10. It is further contended by the respondent no.2 that in such cases after all preliminary procedure is completed, the papers of enquiry should be forwarded to the parent department which should issue final orders. It is his further contention that in view of the said provisions the Departmental Enquiry initiated against Applicant by Respondent No.2 is proper and legal. It is contended by Respondent No.2 that Departmental Enquiry was initiated against Applicant before his retirement and there is no provision in Maharashtra Civil Services (Discipline and Appeal) Rules 1979 regarding lapse of the enquiry on retirement of the Government servant/ delinquent. It is contended by him that after retirement of the applicant, provisional pension was granted to the Applicant for the period from 01.01.2009 to 30.06.2009 and thereafter it was continued till completion of departmental enquiry as per order dated 02.07.2010 issued by the Accountant General. It is contended by it that the amount of Rs.96,562/- was paid to the Applicant towards G.I.S. amount by cheque on 23.01.2009. The amount of Rs.1,85,075/- towards encashment of leave was paid to him on 12.01.2009. The amount of Rs.4,82,672/- towards G.P.F. has been paid to the Applicant by cheque on 16.03.2009. The amount of gratuity was held-up because of the pendency of D.E. and the same will be released to him once final pension papers are submitted to A.G. office. It is contended by the Respondent No.2 that no pensionary benefits except gratuity amount has been withheld Departmental enquiry has been conducted against the Applicant as per rules and the enquiry officer has been appointed as per the provisions and there is no illegality therein. Therefore he prayed to dismiss the O.A.

11. It is further contended by the Respondent No.2 that there is no illegality in the impugned order by which Respondent No.1 appointed Enquiry Officer in the D.E. It is contended by Respondent No.2 that there is no

provision in the Maharashtra Civil Services (Discipline and Appeal) Rules 1979, which provides that departmental enquiry against Government servant lapses on his retirement. Therefore he prayed to reject the O.A.

12. The Applicant has filed to affidavit-in-rejoinder in respect of the contention raised by the Respondents in their affidavit-in-reply. He has reiterated that Respondent No.2 is the only competent authority to initiate departmental enquiry against him and to appoint enquiry officer. Therefore he prayed to allow the O.A.

13. Respondent No.2 has filed affidavit-in-sur- rejoinder and reiterated its contention raised in the affidavit-in-rejoinder.

14. We have heard learned Advocate for the Applicant and learned P.O. for the Respondents. We have also perused the notes of written submission filed on behalf of the Applicant. We have perused the documents placed on record by both the parties.

15. Admittedly the applicant was initially appointed as Sales Tax Inspector in the Sales Tax Department w.e.f. 06.11.1978. He was promoted as Sales Tax Officer, Class-II w.e.f. 22.09.1982. Thereafter, he was further promoted to the post of Sales Tax Officer, Class-I w.e.f. June 1993. There is no dispute about the fact that applicant was sent on deputation on the post of Private Secretary in the office of Minister of State for Public Health and Family Welfare Department, Mumbai from 01.12.1999 and he worked their till 03.04.2001. Admittedly there were allegations against him for accepting money illegally from the candidates by giving promise to give them appointment on Class III and Class IV posts and of cheating. Therefore he has been repatriated to his Parent Department and accordingly he joined his Parent Department i.e. Sales Tax Department. Admittedly Respondent No.2 placed him under suspension by order dated 11.11.2004 and charge-sheet has been served on him. Admittedly Respondent No.2 appointed enquiry officer to conduct enquiry to

the departmental enquiry. Thereafter Respondent No.1 appointed enquiry officer on 14.02.2006 and therefore respondent no.2 cancelled its earlier order dated 16.06.2005 by order dated 17.04.2006. Admittedly thereafter Respondent No.1 has appointed an enquiry officer on Contractual basis as per the policy of the Government. Admittedly by impugned order dated 22.02.2013 Respondent No.1 passed the order of changing enquiry officer in the D.E.

16. Learned Advocate for the Applicant has submitted that applicant was serving with the Finance Department. Respondent No.2 was appointing and disciplinary authority of the applicant, therefore Respondent no.1 has no authority to initiate departmental proceedings against the applicant. He has submitted that Respondent No.1 has no authority to appoint enquiry officer in view of the provision of 8(2) of Maharashtra Civil Services (Discipline and Appeal) Rules 1979. He has submitted that the appointing authority as defined under Rule 2(a) of Maharashtra Civil Services (Discipline and Appeal) Rules 1979 and according to the said rule Respondent No.2, who is the appointing authority, is the only competent authority to initiate the disciplinary enquiry and to appoint enquiry officer in the department enquiry initiated against applicant. He has submitted that Respondent No.2 issued impugned order dated 22.02.2013 cancelling earlier appointment order of enquiry officer and appointed new enquiry officer but the said order is without authority therefore it is illegal. He has also placed reliance on the provision of Rule 7(2) of the Maharashtra Civil Services (Discipline and Appeal) Rules 1979.

17. Learned Advocate for the Applicant has further argued that Applicant was retired w.e.f. 31.12.2008. Therefore Departmental Enquiry against the applicant lapses on his retirement and on that ground also the departmental enquiry initiated against the applicant requires to be quashed. He has further argued that since enquiry lapsed on the retirement of the applicant, the

Respondent No.1 is not empowered to appoint enquiry officer and therefore he prayed to quash and set aside the impugned order dated 22.02.2013.

18. Learned Advocate for the Applicant further submitted that the applicant retired on 31.12.2008 but the Respondent No.2 has withheld his pensionary benefits including gratuity and other benefits since 31.12.2008 and therefore he prayed to direct Respondent No.2 to release retirement benefits to the Applicant. He has further submitted that Respondent No.2 has also not passed necessary order regarding the suspension period of the applicant i.e. w.e.f. 11.11.2004 to 06.10.2008. Therefore he prayed to direct the Respondent No.2 to treat the suspension period of the applicant as duty period and to fix the pay as per 6th pay commission by allowing the O.A.

19. Learned Advocate for the Applicant has much stressed on the point that the enquiry initiated against the applicant is illegal void-ab-initio and therefore it requires to be quashed. In support of his submission, he has placed reliance on various decision of Hon'ble High Court as cited in the written notes of arguments.

20. Learned P.O. for the Respondents has submitted that applicant has not challenged the initiation of departmental enquiry against him. He has further submitted that by filing the present O.A. applicant has challenged the order dated 22.02.2013 by which Respondent No.1 has appointed new enquiry officer. He has argued that Respondent No.1 has decided to conduct common enquiry as applicant and other delinquents who were serving in other department, were involved in the misconduct and therefore in view of the provisions of Maharashtra Civil Services (Discipline and Appeal) Rules 1979 as well as Manual, a common enquiry has been initiated by Respondent No.1 as the act of misconduct by the applicant other took place when the applicant was serving with the Respondent No.1 on deputation. He has submitted that as per the rules Respondent No.1 is the competent authority to initiate the enquiry and to appoint enquiry officer. Therefore in view of the provisions of

Rule 8(2) of Maharashtra Civil Services (Discipline and Appeal) Rules 1979, Respondent No.2 has passed the impugned order dated 22.02.2013 and there is no illegality in it.

21. Learned P.O. for the Respondents has further submitted that during pendency of the O.A. the enquiry has been completed by the Enquiry Officer and he has submitted report to the respondent. Thereafter, a show cause notice has been issued to the Applicant before imposing punishment and after considering his reply, Respondent imposed punishment against applicant by order 22.02.2018 which has been placed by the Respondent on record. He has submitted that applicant has not challenged the said order. He has argued that since the departmental enquiry initiated against the Applicant has been concluded the present O.A. challenging the order in respect of appointment of enquiry officer became infructuous. Therefore he prayed to dismiss the O.A. accordingly.

22. Learned P.O. has further submitted that applicant has suppressed the material facts while claiming the retirement benefits in the O.A.. He has submitted that provisional pension was granted to the Applicant w.e.f. 01.01.2009 to 30.06.2009 by order dated 09.09.2009. Thereafter it was continued from 01.07.2009 till completion of departmental enquiry by the order of Accountant General dated 02.07.2010. He has submitted at bar that during pendency of the O.A. on completion of departmental enquiry regular pension has been granted to the applicant. He has further submitted that G.I.S. amount has been paid to the applicant in the tune of Rs.96,562/- on 23.01.2009 and amount towards encashment of leave was paid to the Applicant in the tune of Rs.1,85,075/- on 12.01.2009. He has submitted that G.P.F. amount of Rs.4,82,672/- was paid to the applicant on 16.03.2009. He has submitted that applicant has suppressed these facts and filed the present O.A. He has further argued that only amount of gratuity has been withheld as per the provisions of Maharashtra Civil Services (Discipline and Appeal) Rules

1979 and the same will be released to the applicant in due course as the departmental enquiry has been concluded. He has submitted that necessary orders regarding suspension period of the applicant will be passed as the departmental enquiry has been concluded now. In view of the said factual position, the O.A. requires to be dismissed. Therefore he prays to dismiss the O.A.

23. On perusal of the record, it reveals that departmental enquiry was initiated against the applicant for the misconduct committed by the applicant when he was deputed as Private Secretary to the Minister of State for Public Health and Family Welfare Department. Departmental Enquiry was initiated against applicant and other delinquents on 11.11.2004. Respondent No.1 had appointed an enquiry officer therein. Thereafter enquiry officer's have been changed because of change in the policy of the Government from time to time. Again by the impugned order dated 22.02.2013, Respondent No.1 changed the enquiry officer because of the change in the policy of the Government. Applicant is challenging the authority of the Respondent No.1 to appoint the enquiry officer. There is no dispute about the fact that the departmental enquiry was initiated against the applicant regarding the alleged misconduct on the part of the applicant when he was serving in Public Health and Family Welfare Department. Applicant and other delinquents were involved in the alleged misconduct. Therefore the enquiry was initiated by Respondent No.1 in view of the provisions of Maharashtra Civil Services (Discipline and Appeal) Rules 1979.

24. Respondent No.1 is the competent authority to appoint the enquiry officer in the D.E. in view of the provisions of Rules 8(2) of Maharashtra Civil Services (Discipline and Appeal) Rules 1979. There is no illegality on the part of the Respondent no.1 in appointing the enquiry officer. The said order has been issued in view of the provisions of Rule 8(2) of Maharashtra Civil Services (Discipline and Appeal) Rules 1979. Therefore we do not find substance in the

submissions advanced by learned Advocate for the Applicant in that regard. Applicant is Class-I Officer, therefore the Government is the disciplinary authority to initiate proceeding against the applicant and the impugned order has been issued by the order of the Governor. Therefore on that account also we find no illegality in the impugned order. It is also material to note here that during the pendency of the O.A., the departmental enquiry has been completed and after following the due procedure punishment has been imposed against the applicant by order dated 23.02.2018. Applicant has not challenged the said order till today. Since the D.E. has been concluded O.A. challenging the order dated 22.02.2018 in respect of appointment of enquiry officer became infructuous. Therefore on that ground O.A. deserves to be dismissed.

25. So far other reliefs claimed by the applicant it is crystal clear from the record that pensionary benefits i.e. provisional pension, G.P.F amount, amount towards encashment of leave has already been paid to the applicant in the year 2009, but applicant has suppressed the said facts and approached this Tribunal claiming the said relief. Suppression of material facts itself is sufficient to dislodge the claim of the applicant in this regard. Not only this but as submitted by learned P.O. the regular pension has been sanctioned to the applicant after final decision in the D.E. Therefore nothing remains to be paid to the applicant towards retirement benefits.

26. Learned P.O. has fairly submitted that the respondent will consider the claim of the applicant regarding suspension period and pass necessary order in due course as the D.E. has been concluded. Therefore, no such directions as claimed by the applicant are required to be issued.

27. We have gone through various decision referred to by learned Advocate for the Applicant. The said decisions are not much useful to the Applicant in the present matter as the applicant has not challenged the order

of initiation of D.E. against him. Therefore we do not find substance in the submissions advanced by the learned Advocate for the Applicant in that regard. Learned Advocate has given much stress on the point that enquiry lapsed on the retirement of the applicant, in view of the provisions of Maharashtra Civil Services (Discipline and Appeal) Rules 1979 but he could not able to point out the relevant provisions of Maharashtra Civil Services (Discipline and Appeal) Rules 1979 in that regard. In the absence of specific provision in that regard we do not find substance in the submission, advanced by learned Advocate for the applicant in that regard. Impugned order issued by Respondent No.1 is in accordance to the provisions of Maharashtra Civil Services (Discipline and Appeal) Rules 1979. There is no illegality in the same. Therefore no interference is called for in it. There is no merit in the O.A. Consequentially it deserves to be dismissed.

28. In view of the discussions in foregoing paragraphs, O.A. stands dismissed with no order as to costs.

Sd/-

(P.N. Dixit)
Member (A)
28.11.2018

Sd/-

(B.P. Patil)
Member (J)
28.11.2018

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