

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.291 OF 2018

DISTRICT : PUNE

Shri Vikas Damodar Dangat.)
Age : 56 Yrs, Occu.: Block Development)
Officer NREGA, ZP Pune and residing at)
663, Gurudatta Society, Near Little Rock)
School, Survey No.23, Pune Satara Road,)
Dhankawadi, District : Pune – 411 043.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Rural Development & Water)
Conservation, Bandhkam Bhavan,)
25th Marzaban Road, Fort,)
Mumbai – 400 001.)
2. The Divisional Commissioner.)
Council Hall, Pune Division,)
Pune – 411 001.)...**Respondents**

Mr. K.R. Jagdale, Advocate for Applicant.

Mrs. A.B. Kololgi, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 23.02.2022

JUDGMENT

1. The Applicant has challenged the order of imposition of punishment of withholding of two increments without cumulative effect passed by disciplinary authority by order dated 03.10.2015 and also

challenged the order of appellate authority dated 04.06.2016 confirming the punishment. Besides he has also challenged the order dated 27.11.2017 passed by Government dismissing revision on the ground that since appeal remedy is already availed, the revision is not maintainable.

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

While Applicant was serving as Child Development Project Officer (CDPO), Khed, District Pune, the departmental proceedings were initiated against him under Rule 8 of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (hereinafter referred to as 'Rules of 1979' alleging that while purchasing weighing scales and protein powder, he had committed serious irregularities and had transferred one Supervisor viz. Smt. Sangita Gaikwad out of circle unauthorizedly since powers vests with Deputy Chief Executive Officer and thereby committed breach of Rule 3 of Maharashtra Civil Services (Conduct) Rules, 1979 (hereinafter referred to as 'Conduct Rules 1979' for brevity). Before initiation of regular DE, preliminary enquiry was conducted by 4-Member Committee headed by Smt. Nandini Ghanekar, Deputy Chief Engineer Officer, Child Development, Z.P, Pune wherein Committee found irregularities. Thereafter regular DE was initiated. The Applicant denied the charges by filing statement of defence and participated in DE. On conclusion, Enquiry Officer submitted report (Page Nos.42 to 86 of P.B.) and held that the Applicant had committed irregularities in the matter of purchase of weighing scales and also held that the Applicant transferred Smt. Sangita Gaikwad without any authority. The disciplinary authority furnished enquiry report to the Applicant to which he had submitted his reply. However, the disciplinary authority was not satisfied with the reply and imposed punishment of withholding of two increments for two years without cumulative effect. Being aggrieved by it, the Applicant preferred an appeal which came to be dismissed by order dated 04.06.2016. The Applicant preferred revision which was also dismissed

by order dated 27.11.2017 having found that since Applicant has already availed the remedy of appeal, the revision is not maintainable.

3. Shri K.R. Jagdale, learned Advocate for the Applicant sought to assail the impugned order of punishment *inter-alia* contending that Enquiry Officer has not followed proper procedure of recording evidence of witnesses and was influenced by preliminary enquiry report. He has further pointed out that Enquiry Officer recorded finding that the charges are partly proved without specifying it. But disciplinary authority – Respondent No.2 (Divisional Commissioner) in a very cryptic and one-page order without considering final statement of defence and other points raised by him during the enquiry simply passed order of withholding two increments without cumulative effect on the ground that Applicant is retiring on 31.05.2020. He has pointed out that Respondent No.2 disciplinary authority did not advert to any of the ground raised by the Applicant and directly imposed punishment which clearly exhibits total non-application of mind and cavalier manner of dealing with the enquiries. As regard charges, he has further pointed out that there is no charge of financial misappropriation and charge is restricted to irregularities in the matter of procuring the electronic weighing scales. The charge of irregularities in purchasing of protein powder found not proved by the Enquiry Officer himself. As regard transfer of Smt. Sangita Gaikwad, he has pointed out that the proposal for *expost-facto* sanction was forwarded to the competent authority but this aspect was not considered by the Enquiry Officer as well as disciplinary authority.

4. Per contra, learned Presenting Officer made feeble attempt to justify the impugned order stating that the scope of interference by the Tribunal in judicial review as regard domestic enquiry is very limited and sufficiency of evidence to sustain the charge cannot be looked into by the Tribunal. She tried to contend that Enquiry Officer has given ample opportunity to the delinquent and there is no violation of principles of natural justice. She, therefore, prayed to dismiss the O.A.

5. The facts giving rise to initiation of DE basically started in view of preliminary enquiry report dated 14.01.2011. The perusal of record reveals that 4-Member Committee headed by Smt. Nandini Ghanekar was appointed to enquire into irregularities in the purchase of electronic weighing scales and protein powder. It appears from perusal of enquiry committee report that the statements of some supervisors serving in the project were recorded. The Enquiry Committee found prima-facie irregularities in the purchase of electronic weighing scales and protein powder. It is on the basis of preliminary enquiry report, the DE was initiated by issuance of charge-sheet on 29.06.2012. In charge-sheet, as per Charge No.1, the Applicant has committed irregularities in the project of electronic weighing scales and protein powder. Whereas, as per Charge No.2, the Applicant transferred Smt. Sangita Gaikwad unauthorizedly and thereby committed breach of Rule 3 of 'Conduct Rules 1979'.

6. Insofar as report of Enquiry Officer is concerned, he concluded as under :-

“१) आरोप क्रमांक १ मध्ये डिजिटल वजनकाटे तालुकास्तरावर अपचारी यांनी खरेदी केलेचे सरकारी साक्षीदार यांचे साक्षी, त्यांनी पूर्वी दिलेल्या जबाबावरून व चौकशी समितीच्या अहवालावरून, कार्यालयीन लिपिकाचे जबाबावरून स्पष्ट झालेले आहे. तसेच डिजिटल वजनकाटे ग्रामपातळीवर खरेदी केलेचा कोणताही ठोस पुरावा अपचारी यांनी मांडलेला नाही, व बचाव साक्षीदार यांनीही तो दिलेला नाही, यास्तव अपचारी यांनी तालुकास्तरावर डिजिटल वजनकाटे स्वतःच्या अधिकारात खरेदी केलेचे स्पष्ट होत आहे, मात्र तालुका स्तरावरून अपचारी यांनी प्रोटीन पावडर डबे खरेदी केलेचा ठोस पुरावा चौकशीत आढळून आलेला नाही त्यामुळे अपचारी यांचेवर मुद्दा क्रमांक २ अंशता: सिद्ध होत आहे.

आरोप क्रमांक १ : अंशता: सिद्ध होत आहे

आरोप क्रमांक २ : अंशता: सिद्ध होत आहे”

7. Thus, it is quite clear from Enquiry Officer report that he recorded finding that both charges are proved partly. He held Applicant guilty for irregularities in purchase of electronic weighing scales and for transfer of Smt. Sangita Gaikwad without any authority. As regard irregularities in protein powder, he found no such irregularity.

8. In view of aforesaid enquiry report, the disciplinary was required to examine and to record the finding as to which charge is specifically

proved against the Applicant and to record finding to that effect. However, surprisingly, disciplinary authority (Respondent No.2 – Divisional Commissioner) simply accepted *ipse-dexit* of Enquiry Officer and in one paragraph order held the Applicant guilty without giving any reasons or any discussion on the point of charges levelled against the Applicant and how it is acceptable. He did not advert final statement of defence. The order of disciplinary authority is as under :-

“ज्या अर्थी मुख्य कार्यकारी अधिकारी, जिल्हा परिषद पुणे यांनी श्री. व्ही.डी. दांगट यांचे प्रकरणात कारवाई करणेचे प्रस्तावित केले होते व ज्याअर्थी श्री. व्ही.डी. दांगट यांची खातेनिहाय चौकशी ही सहाय्यक आयुक्त (चौकशी) आयुक्त कार्यालय पुणे यांचे मार्फत चौकशी करण्यात आलेली आहे. सदर खातेनिहाय चौकशीमध्ये श्री. व्ही.डी. दांगट यांचेवरील ठेवण्यात आलेले दोनही आरोप अंशता: सिद्ध होत आहेत असे चौकशी अधिकारी यांचे अहवालात नमूद करण्यात आले, त्या अर्थी श्री. व्ही.डी. दांगट यांच्याविरुद्ध महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम १९८९ च्या नियम ५ अन्वये कारवाई करण्याचे ठरविण्यात आले होते व तसे ज्ञापन उपरोक्त संदर्भीय पत्र क्रमांक ६ अन्वये देण्यात आलेले होते व त्यासोबत विभागीय चौकशी अहवाल देण्यात आलेला होता. सदरचे ज्ञापनावर उपरोक्त संदर्भीय पत्र क्रमांक ७ अन्वये श्री. व्ही.डी. दांगट यांनी खुलासा सादर केलेला होता. उपरोक्त संदर्भीय पत्र क्रमांक ८ अन्वये श्री दांगट यांनी सादर केलेल्या खुलासावर मुख्य कार्यकारी अधिकारी यांनी अभिप्राय नोंदवलेले आहेत. या सर्व बाबींचा योग्य विचार विचार करणेत आला.

वरील सर्व उपरोक्त संदर्भीय पत्रांचे अवलोकन करून महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम १९७९ मधील नियम ५ मधील तरतुदीनुसार व मा. प्रधान सचिव, ग्रामविकास विभाग मंत्रालय मुंबई ३२ यांनी दिनांक ३०/६/२०१४ चे आदेशान्वये प्रदान केलेल्या अधिकाराचा वापर करून तसेच श्री व्ही.डी. दांगट हे दिनांक ३१/५/२०२० रोजी सेवानिवृत्त होत आहेत. या बाबी सहानुभूतीपूर्वक विचारात घेऊन मी एस चोक्कलिंगम, आयुक्त पुणे विभाग पुणे असा आदेश देत आहे की श्री दांगट यांच्या दोन (२) वेतनवाढी त्या पुढील वेतनवाढीवर परिणाम न करता दोन वर्षांकरिता रोखून ठेवण्याची शिक्षा बजावण्याचा निर्णय घेतला आहे.”

9. It is thus manifest that the disciplinary authority simply imposed punishment without making any discussion of the report and mechanically imposed the order of punishment. In other words, there is total non-application of mind by the authority who is under obligation to consider the evidence, findings recorded by Enquiry Officer and the contentions raised by the delinquent.

10. Indeed, ‘Rules of 1979’ provides detailed procedure to be followed by disciplinary authority on receipt of inquiry report. In this behalf, Rule 9(2) ‘Rules of 1979’ mandates that on receipt of inquiry report, the disciplinary authority shall record its finding on each charge and then to proceed further for imposing punishment, if the charges are proved. Whereas in the present case, surprisingly, the disciplinary authority did not bother to consider detailed final statement of defence submitted by the Applicant on receipt of inquiry report and impugned order is totally

silent about merits or demerits of the contentions raised by the Applicant. He has not recorded finding on the charges levelled against the Applicant in any manner and all that he stated that since Applicant is retiring on 31.05.2020 taking sympathetic approach, the punishment of withholding two increments without cumulative effect is imposed. Such mode adopted by the disciplinary authority who is under obligation to record finding on each charge is totally unknown to law. Suffice to say, the disciplinary authority acted in a very perfunctory manner and in defiance of Rule 9(2) of 'Rules of 1979'.

11. True, the scope of judicial interference by the Tribunal in departmental enquiries matter is very limited. This is applicable where disciplinary authority had applied his mind and recorded finding. Where no such finding is recorded and disciplinary authority acted in very perfunctory manner these limitations upon Tribunal in judicial review will not come in the way.

12. Shri K.R. Jagdale, learned Advocate for the Applicant in this behalf placed reliance on the decision of Hon'ble Supreme Court **2007(1) SCC (L & S) 388 [Director (Marketing) Indian Oil Corporation Ltd. & Ors. Vs. Santosh Kumar]**. In that case, it was noticed that appellate authority has simply adopted the language employed by the disciplinary authority and inflicted punishment of dismissal. In that situation, Hon'ble Supreme Court remanded matter to the disciplinary authority to decide the matter afresh. Whereas in the present case, it is disciplinary authority itself failed to apply mind and to record finding on each charge as mandated by Rule 9(2) of 'Rules of 1979'.

13. As stated above, the charge against the Applicant was that he committed irregularities in purchasing electronic weighing scales and out of circle transfer of Sangita Gaikwad. Insofar as irregularities in purchase of protein powder is concerned, the Enquiry Officer held that the said charge is not proved. The perusal of enquiry papers reveals that

witness Sangita Gaikwad all that stated before Enquiry Officer that her statement is as per the charges levelled against the Applicant as per Charge-sheet dated 11.03.2013. This is the only statement made by her recorded by Enquiry Officer. This is very strange manner of recording of evidence and needless to mention, it cannot be treated as evidence in the eye of law. True, there are other witnesses examined during regular enquiry. However, most of the evidence seems not linked to the specific charge of irregularities in purchase of electronic weighing scales. What was the procedure required to be adopted by the Applicant for purchasing electronic weighing scales and how the purchasing of electronic weighing scales as done by the Applicant is irregular or contrary to some Rules was required to be find out before Applicant held guilty for irregularity in purchasing of electronic weighing scales. The Applicant has also examined so many defence witnesses in support of his case. However, there is no whisper about it in impugned order passed by disciplinary authority. Indeed, the disciplinary authority did not utter a single word on the merits or demerits of Inquiry Report as well as on several contentions raised by the Applicant in his detailed statement of defence. The disciplinary authority directly proceeded imposing punishment stating that since Applicant is due to retire, he is taking sympathetic approach.

14. In this view of the matter, I have no other option except to remand the matter to disciplinary authority to pass appropriate order after considering Inquiry Report and contentions raised by the Applicant and by recording specific finding on the charges levelled against the Applicant. Hence, the following order.

ORDER

- (A) Original Application is allowed partly.
- (B) Impugned orders dated 03.10.2015 and 04.06.2016 are hereby quashed and set aside.

- (C) Matter is remitted back to Respondent No.2 – Divisional Commissioner, Pune (disciplinary authority) with direction that he shall consider detailed final statement of defence made by the Applicant and also consider the report of Enquiry Officer in its proper perspective and shall record the findings on the charges levelled against the Applicant and shall pass appropriate order on its own merit within three months from the date of receipt of this order. The disciplinary authority is at liberty to give opportunity of hearing to the Applicant.
- (D) No order as to costs.

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

Mumbai

Date : 23.02.2022

Dictation taken by :

S.K. Wamanse.

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