

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO.368 of 2008**

Maroti S/o Motiramji Rawalkar,
Aged about 56 years,
R/o Ward no.25, Malgujaripura,
Wardha.

Applicant.

Versus

- 1) State of Maharashtra,
through Secretary Department of
Revenue and Forest,
Mantralaya, Mumbai-32.
- 2) The Collector,
Wardha.
- 3) The Sub Divisional Officer,
Wardha.

Respondents

S/Shri P.D. Meghe, P.K. Waghmare, D.N. Mathur, P.S. Lapalikar,
Advocates for the applicant.

Smt. S.V. Kolhe, Id. P.O. for the respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman) (A)

Shri J.D Kulkarni (Vice-Chairman) (J)

JUDGEMENT

PER : Vice-Chairman (J).

(Delivered on this 11th day of August,2017)

Heard Shri P.D. Meghe, learned counsel for the applicant and Smt. S.V. Kolhe, Id. P.O. for the respondents.

2. The applicant Maroti Motiramji Rawalkar was appointed as Talathi by respondent no.2, i.e., the Collector, Wardha in 1979. He was kept under suspension by respondent no.3, i.e., the Sub Divisional Officer, Wardha on 1/6/1990. On 5/9/1990 the charge sheet was issued against the applicant and inquiry report was submitted in the inquiry. On 28/6/1995 the applicant came to be dismissed as the charges against the applicant were proved.

3. Being aggrieved by the order dated 28/6/1995, the applicant preferred O.A. bearing no. 448/1997 before the M.A.T. and vide order dated 6/3/2007 this Tribunal directed respondent no.3 to give an opportunity to the applicant to submit his explanation in respect of enquiry report and remitted back the matter to respondent no.3. On 10/4/2007 the respondent no.3 issued a letter calling upon applicant to explain as to why the enquiry report shall not be accepted. The applicant submitted his explanation on 21/4/2007. The

respondent no.3 did not accept the explanation and dismissed the applicant w.e.f. 28/6/1995 vide order dated 6/6/2007. It was retrospective dismissal, being aggrieved by the order of retrospective dismissal, the applicant preferred an appeal before respondent no.2 but departmental appeal was dismissed by respondent no.2 on 10/7/2008 and the order passed by respondent no.3 was confirmed. Being aggrieved by the orders of dismissal passed by respondent nos. 2 and 3 the present O.A. is filed. In the original O.A. the applicant prayed that the impugned orders passed by respondent nos.2 and 3 be quashed and set aside and the applicant be reinstated with full back wages.

4. It seems that the applicant was convicted by the Special Judge, Wardha for the offences under the Prevention of Corruption Act on 24/2/1995. Against the said Judgment, the applicant preferred appeal before the Hon'ble High Court of Judicature Bombay Bench at Nagpur and Hon'ble High Court in Criminal Appeal no.110/1995 was pleased to allow the appeal vide Judgment and order dated 16/8/2005 and the applicant was acquitted. Thereafter the applicant has filed this O.A.

5. This Tribunal vide order dated 25/1/2016 was pleased to observe that the respondents were obliged to review the order of dismissal dated 23/3/1995, since the applicant has been acquitted in an appeal filed by him. In view thereof, the applicant was directed to file representation to revoke the order of dismissal and the applicant was allowed to amend the O.A. accordingly. It seems that in view of the liberty given by this Tribunal the applicant filed representation before the competent authority. However vide order dated 3/8/2016 his representation has been rejected and the applicant's claim for reinstatement was rejected by SDO, Wardha, i.e., respondent no.3. The applicant accordingly amended the O.A. and has requested that the order was passed by the SDO, Wardha on 3/08/2016 (Annex-L) be quashed and set aside.

6. In the meantime, the applicant attained the age of superannuation on 31/3/2011. The applicant has therefore claimed arrears (from 24/2/1995 till 31/3/2011) of pay and allowances and pensionary benefits. It is stated that the order dated 3/8/2016 (Annex-L) whereby the respondent no.3,i.e., SDO, Wardha confirmed the order of dismissal be quashed and set aside.

7. The respondent no.3 filed affidavit-in-reply and tried to justify the order passed by the competent authorities. It is stated that departmental enquiry was conducted against the applicant and since he was found guilty the order of dismissal was inflicted. It is further stated that the Appellate Authority also considered the order of dismissal and confirmed the same. Full opportunity of hearing was given to the applicant and therefore the order of punishment of dismissal is legal and valid and the applicant's representation for reinstatement was rightly rejected.

8. Heard Shri P.D. Meghe, Id. Counsel for the applicant and Smt. S.V. Kolhe, Id. P.O. for the respondents. We have also perused the application, affidavit, reply-affidavit and various documents placed on record by the respective parties. It seems that the order of dismissal was passed by SDO, Wardha on 6/6/2007 in the departmental inquiry. Against the said order the applicant filed appeal before the Collector, Wardha and the Collector, Wardha vide order dated 10/7/2008 dismissed the appeal. The learned counsel for the applicant invited our attention to the order passed by this Tribunal on 25/1/2016 in this O.A. In the said order this Tribunal has observed that it was incumbent upon the respondents to review

the order of dismissal dated 23/3/1995 since the applicant has been acquitted in an appeal filed by the applicant. The Tribunal, therefore, allowed the applicant to file representation by making following observations :-

"In view of the acquittal of the applicant by the High Court in an appeal filed by him, he has a cause of action to seek review of the order of dismissal passed on 23/3/1995. May be, inadvertently this relief has not been sought nor the respondents have taken any step in that regard. Assuming that, applicant's dismissal dated 6/6/2007 made effective from 28/6/1995, is set aside or a rigour of penalty is minimized, the order of dismissal dated 23/3/1995 (passed because of his conviction on a criminal charge) will continue to operate unless it is revoked. It is, therefore, necessary for the applicant to submit representation to the respondents to revoke the order of dismissal dated 23/3/1995 and at the same time incorporate the similar prayer in this O.A. by way of amendment."

9. We have perused the inquiry report in the departmental inquiry, the copy of which is placed on record at P.B. page nos. 41 to 46 (both inclusive). It seems that five charges were framed against the applicant which were as under :-

1- Jh-, e-, e-jkoGdj gs fnukd 3@4@1990 ikl u fcuk
 ijokuxhus lrr xfgtj jkghys R; kps xfgtjheGs R; kps l k>kps
 tux.kuk] dklrdkjauk 7@12] [kl & kph irh nsk bR; knh egRokps
 dkekoj ifj.kke >kyl-

2- Jh-, e-, e-jkoGdj] rykBh ; kauk R; kps xfgtjhcrcrps
 Li "Vhdj.k ekxhrys vl rk o dkekoj gtj gks; kckr jktLo fujh{kd
 ekQr rgfl ynkj l syw; kauh l puk fnY; k vl rk rl p 1988&89 o
 1989&90 ; k o"kkp; k ol nytp; k jdkm g nlrj ri kl .khdjrk jktLo
 fujh{kd] uk; c rgfl ynkj o rgfl ynkj ; kauh okjokj vknsk fnys
 vl rkukgh rs gtj >kys ukgh v'kki dks R; kauh ofj"Blkps vkns kph
 vogsyuk dsh-

3- Jh-, e-, e-jkoGdj] rykBh ; kauh l k-dz14 oMxk ¼dyk½ ; k
 gyD; krhy 'kkl dh; ol nyhps jdei dh #51]485&97 , o<; k
 jdeph i wfu; ksthr gmsvQjkrQj dsh-

4- Jh-, e-, e-jkoGdj ; kauh fnukd 18@1@1988 rs10@6@1990
 ; k dkyko/khr ol ny dsh; k jdei dh , dwk #- 4587&20 , o<; k
 jdeP; k foyekushkj .kk dsh o R; k jdepk rkrjrk [kktxh oki j dsh
 vkgs

5- Jh-, e-, e-jkoGdj] rykBh gsR; kpsed; ky; h Eg.ktp oMxk
 ¼dyk½ fdok R; kps tEksrykBh dk; kzy; vkgsrEksEg.ktsl syw; Eksjkr
 ul u fcuk ijokuxhuso/kkz; Eksjkrkr-

10. Out of these five charges, the Inquiry Officer did not consider the charge nos. 3&4 since these charges were under consideration before the Special Judge and it was held that the charge nos. 1,2 & 5 raised against the applicant were proved. Perusal of the charges as aforesaid clearly shows that the only

serious charges against the applicant were charge nos. 3&4 regarding misappropriation of the Government amount and these two charges have been dealt with by the Competent Special Judge. The applicant was convicted by the Special Judge, but the Hon'ble High Court acquitted the applicant and therefore these two serious charges have not been proved against the applicant. The remaining charges, i.e., charge nos.1,2 & 5, are of minor nature, but this fact seems to have not been considered by the appellate authority.

11. The learned counsel for the applicant invited our attention to the grounds taken by the applicant in appeal memo which is at P.B. page nos. 52 to 58 (both inclusive). The main grievance of the applicant was that the order of dismissal has been passed on 6/6/2007. However, the applicant has been dismissed with retrospective effect from 28/6/1995. The applicant challenged this action, but the appellate authority, i.e., Collector, Wardha did not consider this issue. The applicant has also raised the issue that he was kept under suspension from 1/6/1990 and the said suspension continued till his earlier dismissal vide order dated 28/6/1995. However, while passing order, the respondents treated period of dismissal from 1/6/1990 to 28/6/1995 as period of

suspension and no observations are made regarding subsequent five years. This aspect has also not been considered by the appellate authority. The applicant submitted Medical Certificate in respect of his period of absence and pointed out that he has also received the salary for such period still his absence was treated as unauthorised and this fact has not been considered by the appellate authority.

12. It seems that appellate authority has also not considered the mitigating circumstances. In this case it is material to note that the applicant has been kept under suspension since 1990 and he got retired on superannuation in 2011. During this period he was required to face departmental enquiry and was also trial before Special Judge. The charges on which criminal case was filed against the applicant were also subject matter of the departmental enquiry. Fortunately for the applicant the Inquiry Officer did not give his opinion as regards the charges in criminal case. It seems that the applicant's leave was already granted by the competent authority and therefore it was obligatory on the respondent authority to consider as to whether his absence was unauthorised or not. In the inquiry report the Inquiry Officer

accepted the fact that the applicant was on medical leave from 3/4/1990 to 21/4/1990 and that he also got salary for the said period and therefore it cannot be said that he remained absent without permission. The competent authorities ought to have considered whether the charges in the departmental inquiry are really serious or not so as to warrant dismissal of the applicant that too with retrospective effect. However these aspects have not been considered by the competent authority as well as by the appellate authority.

13. Generally and normally the Tribunal is not expected to act as appellate authority and to appreciate the evidence in the departmental enquiry. However, in the present case it may be necessary to consider the mitigating circumstances. It will be clear that the applicant is under suspension since 1/6/1990 till he was dismissed from the service vide order dated 6/6/2007 but w.e.f. 28/6/1995. In no case the order of dismissal can be passed with retrospective effect. In the present case however said order is made effective from 28/6/1995. The applicant was punished in the departmental enquiry against which he filed appeal, but the appeal was also dismissed. Thereafter the matter was remanded back by the Tribunal and after giving opportunity fresh order was passed in

the inquiry and the applicant came to be dismissed again vide order dated 6/6/2007 that too with retrospective effect. Such order of dismissal with retrospective is illegal and therefore is required to be quashed and set aside.

14. We have perused the order passed by the Hon'ble High Court in Criminal Appeal no.110/1995. The same is at P.B. page nos. 59A to 59S (both inclusive). The Hon'ble High Court has held that the prosecution has failed to prove that the applicant was indulged in corruption. This Judgement has become final. The applicant, as already stated has filed representation for re-consideration of his case and for revocation of dismissal order and for reinstatement. The SDO, Wardha has not considered the representation with a proper perspective. He has also not considered the fact that the retrospective dismissal was not proper. The SDO, Wardha has observed that it was necessary that the applicant should have been reinstated because he was acquitted from the criminal charges by the Hon'ble High Court. However it was observed that the applicant has also been found guilty in departmental enquiry and these two proceedings were separate. The only charges on which the applicant seems to have been punished are (1) fouk ijokuxhus xfgtj jkg.kj (2) ofj"Blk; k vlns kkp h vogsyuk dj.k

(3) e[; ky; kr gtj u jkg.ks The said charges were however not challenged. However, the points raised in the appeal memo are not properly considered with perspective by the SDO, Wardha. These are very minor charges and in any case the applicant should not have been dismissed from the service on such charges. The order passed by the SDO, Wardha on 3/8/2016 therefore it seems to be without application of mind.

15. Considering the fact that the matter was already remanded once for re-consideration of the applicant's case to the appellate authority and further fact that the applicant is facing departmental enquiry and also faced criminal trial that too from 1990, we are of the opinion that it may not be in the interest of justice and equity again to remand the case for re-consideration of points raised by the applicant in his appeal memo or before competent authority and therefore in such circumstances we pass the following order :-

ORDER

(i) The O.A. is partly allowed. The impugned orders of dismissal of the applicant with retrospective effect from 28/6/1995 passed by respondent no.3 as well as respondent no.2 are quashed and set aside. Considering the mitigating

circumstances as already referred in our order, we direct that the applicant shall be treated as retired compulsorily w.e.f. 6/6/2007.

(ii) The applicant was under suspension period from the date of suspension till 6/6/2007. The respondents are directed to take decision as regards suspension period of the applicant from the date of suspension till 6/6/2007 as to whether the same shall be treated as suspension period on duty period. Such decision shall be taken within two months from the date of this order.

(iii) The respondents are also directed to consider applicant's claim for pension and pensionary benefits if admissible, as per Maharashtra Civil Services (Pension) Rules, 1982 and shall grant such benefits to him within 6 months from the date of this order. No order as to costs.

(J.D Kulkarni)
Vice-Chairman (J)

(Rajiv Agarwal)
Vice-Chairman (A)

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