

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.430 OF 2016

DISTRICT : PUNE

Shri Chandrakant Ram Kapase.)
Age : 56 Yrs, Occu.: Assistant Cook and)
Residing at Shende Vasti, Gopal Wadi)
Road, Opp. Sakhare Garage, Daund,)
Pune.)...**Applicant**

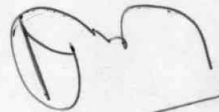
Versus

1. The State of Maharashtra.)
Through the Addl. Secretary,)
Home Department, Mantralaya,)
Mumbai - 400 032.)
2. The Commandant,)
SRPF, Group No.7, Daund, Pune.)
3. The Special General of Police,)
SRPF, Pune.)...**Respondents**

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

Ms. Savita Suryawanshi, Presenting Officer for Respondents.

**CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)
R.B. MALIK (MEMBER-JUDICIAL)**



DATE : 06.10.2016

PER : R.B. MALIK (MEMBER-JUDICIAL)

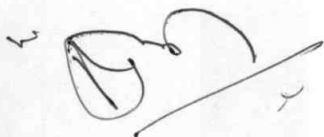
JUDGMENT

1. The Applicant, a dismissed Assistant Cook questions the order of his dismissal on disciplinary grounds (corruption) made by the disciplinary authority and confirmed in appeal.

2. We have perused the record and proceedings and heard Mr. R.M. Kolge, the learned Advocate for the Applicant and Ms. Savita Suryawanshi, the learned Presenting Officer (PO) for the Respondents.

3. The Applicant was working as an Assistant Cook at S.R.P.F, Daund under the 2nd Respondent - Commandant, SRPF Group No.7, Daund. The 1st Respondent is the State of Maharashtra in the Home Department. The 3rd Respondent is the Inspector General of Police, SRPF, Pune.

4. The gist of the allegations spread over as many as eight heads of charge framed against the Applicant was that he cheated Sachin R. Kamble and Mahendra V. Gaikwad and lured them to part with Rs.35,000/- and



Rs.22,000/- respectively holding out false promise to get them Government jobs. An Enquiry Officer (EO) came to be appointed. Including the Applicant and one Ajay alias Babu A. Bhosle, nine witnesses were examined. In fact, the present Applicant and the said Bhosle were prosecuted on a complaint of the nature similar to the allegations giving rise hereto. That was **Criminal Case No.337 of 2009 (State of Maharashtra Vs. Chandrakant R. Kapse and one another)** before the Learned Judicial Magistrate First Class, Daund. By the Judgment and order dated 03.12.2012, both the accused came to be acquitted. The complainant therein was Mrs. More, who was seeking appointment on compassionate ground in place of her deceased husband. It was alleged by her that the accused duo (including the present Applicant) duped her on the pretext of securing that job for her. As just mentioned that prosecution failed. However, neither Mrs. More, the complainant therein had anything to do with the departmental enquiry herein relevant nor the complainants S/S Sachin R. Kamble and Mahendra V. Gaikwad had anything to do with that particular prosecution. The only similarity was that broadly so speaking, the allegations were similar. Needless to say, Mrs. More, the complainant in that prosecution was not a witness in the DE.



5. The EO submitted his report to the disciplinary authority and the disciplinary authority by his order dated 4.3.2009 perused that report of the EO and concluded that the charges 1 to 5 were proved. Those charges were relating to the witnesses of the DE – Shri Sachin Kamble and Shri Mahendra V. Gaikwad. The sum and substance of the allegations were that through the above referred Balu A. Bhosle, the co-accused in the prosecution, the Applicant took Rs.35,000/- and Rs.22,000/- respectively from them. The sum and substance of the 4th and 5th charge was pertaining to those very amounts and the crux was that the Applicant had accepted this fact on Affidavits, which Affidavits found part and parcel of the record and I have perused them. Then, by a detailed order, the disciplinary authority being the 2nd Respondent accepted the report of the EO and imposed the punishment of dismissal from service.

6. Thereafter, a few proceedings were initiated by the Applicant in the form of appeal, review, etc., but it is not necessary for us to delve there into. It could be suffice to mention that as per the order dated 3rd March, 2016 made by the Hon'ble Chairman, the appellate authority heard the appeal and decided it by a reasoned order. He held in effect that the prosecution upon the complaint of



Mrs. More and the present matter were entirely different. He concurred with the disciplinary authority and dismissed the appeal.

7. Mr. Kolge, the learned Advocate for the Applicant assailed the DE and the impugned orders while Mr. Bhise acclaimed them.

8. Before proceeding further, it will be appropriate to first of all delineate for ourselves the scope of our jurisdiction in exercising powers of judicial review of administrative action. It is not an appellate jurisdiction. Here, the scope is not so wide as that of an appellate authority. We are required to make sure that the process by which the conclusion was reached was fully informed by the principles of natural justice. We are concerned with that process more than the conclusion itself. A mere possibility of the existence of another point of view on the same set of facts will not be sufficient for judicial interference or even intervention in exercise of this jurisdiction. The codified procedural law for proof of an offence in a criminal trial which is to be decided upon a degree of burden of proof which requires a proof beyond reasonable doubt or a Civil Suit which has to be decided on the basis of preponderance of probability is such that

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the burden in these proceedings is not of proof beyond reasonable doubt, but at the most, it is preponderance of probability. There has to be the presence of some incriminating evidence which to an objective process of evaluation would be sufficient to reach the conclusion reached by the authorities below. The existence of the evidence more than the sufficiency thereof would be the guiding factor.

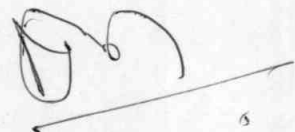
9. It is, however, equally true that the Tribunal cannot be ransomed into moving in a Trans and accepting whatever is offered by the establishment in the name of proof of delinquency. No doubt, it is a circumscribed jurisdiction, but in actual practice, it cannot be reduced to a state of no jurisdiction. This broadly so speaking, is the legal and judicial parameter which to work within and to apply it to the facts. Even the evaluation of evidence is not so meticulous as in case of the criminal trial, but the insistence on adherence to the principles of natural justice can hardly be under estimated.

10. We have, staying within the above limitation, perused the record of the enquiry. We find that the witnesses S/S Purushottam Meshram, Sachin Kamble, Mahendra V. Gaikwad, Ajay @ Balu A. Bhosle, Baba D.



Yede and the Applicant himself as well as Mrs. Sharda R. Kamble were allowed to be cross-examined during the enquiry. In case of most of them, their statements which can be placed at par with the examination in chief in traditional judicial system were recorded earlier, but then the opportunity to cross-examine the witnesses was given and availed of. No doubt, at one place in the record of the enquiry, which bears number 75 and the serial number 151 (handwritten), it has been mentioned in Marathi in effect that other witnesses remained absent, and therefore, they could not be cross-examined. Now, that surely does not militate against the opportunity to cross-examine. That opportunity was clearly given. After all, there has to be realization of existing realities and if a few witnesses do not turn up at all to offer them for cross-examination while others do, the whole case cannot be thrown out of the window.

11. Upon that material on record, finding of guilt was proposed by the EO and accepted by the disciplinary authority and then by the appellate authority. It is possible that a fully trained judicial person may perhaps have written orders which might appear to be more methodical and accurate to the purists. However, let us be clear about one fact that even here, the orders are not



entirely sub-standard. In fact, we must mention in all fairness that both the orders are quite up to the mark. Therefore, it is not possible for us to assail the orders for practically no reason. Some allowance has got to be made for individualistic approach of authorities in such matters. We have carefully perused the material on record and we are satisfied that the conclusions reached were natural and quite warranted. The delinquency was serious in nature and most unbecoming of a public servant wherever he was placed in life.

12. There is no scope for improvement in this matter and just like the proof of delinquency even as regards the punishment, we are satisfied that it was not at all disproportionate and our conscience has not been shocked thereby.

13. Quite understandably advantage was sought to be taken of the acquittal of the Applicant and the co-accused by the Court of the learned JMFC, Daund. However, as already made clear the complainant in that prosecution had nothing to do with the present DE and the present complainants had nothing to do with that prosecution and no advantage thereof could be taken. Therefore, it is not necessary for us to go as far as to note



that it is always possible that on same set of facts, the prosecution as well as DE can be initiated and it is always possible that because of a stark difference in the matter of burden of proof and displacement of onus even an acquitted accused could be held of guilty in a disciplinary proceeding. There are exceptions to this rule but the present facts do not provide an occasion to delve there into. We hold that no advantage accrues to the Applicant of his acquittal in that criminal case.

14. The upshot is that the impugned orders are fully warranted by facts. There is no merit in the Original Application and the same is hereby dismissed with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
06.10.2016

Sd/-

(Rajiv Agarwal)
Vice-Chairman
06.10.2016

Mumbai

Date : 06.10.2016

Dictation taken by :

S.K. Wamanse.

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