

MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO.542/2006.

Keshao Kisan Baone,
Aged about 53 years, Occ : Service,
R/o 141, Manish Nagar,
P.O. Vivekanand Nagar, Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra
through its Secretary,
Department of School Education,
Mantralaya Extension Bhavan,
Mumbai-32.
- 2) The State of Maharashtra
through its Secretary,
Department of School Education & Sports,
Mantralaya, Mumbai-32.
- 3) The Director of Education,
(Secondary and Higher Secondary),
(M.S.), Pune.
- 4) Zilla Parishad, Wardha,
Through its Chief Executive Officer.
- 5) The Advocate General,
(M.S.), High Court Building,
Fort, Mumbai.

Respondents

Shri S.M. Khan, Advocate holding for Shri P.C. Marpakwar,
the learned counsel for the applicant.

Shri A. M. Ghogre, P.O. for respondent Nos.1 to 3.

None for the respondent Nos.4 and 5.

Coram:- B. Majumdar, Vice-Chairman and'
R.B. Malik, Member (J)

Dated: - 20th April 2016.

Oral order

Per: Member (J)

This O.A. arises out of certain disciplinary proceedings adopted against the applicant who was working in Maharashtra Education Service. The disciplinary authority imposed punishment of stoppage of one increment without effect on future increments for three years. No administrative appeal was preferred there-against. Further relief is sought with regard to the declaration that Rule 68 of the Maharashtra Civil Services (Joining Time, Foreign Service and Payment during Suspension, Dismissal and Removal) Rules, 1981 is violative of Articles 14 and 16 of the Constitution of India (Constitution hereinafter).

2. The applicant at the time relevant hereto was working as Education Officer, Zilla Parishad at Wardha. There were allegations against him of improper appointment and/or approval in respect of appointments of certain persons. These allegations got condensed into four heads of charges. The Enquiry Officer was appointed. He exonerated the applicant from two charges. While in respect of remaining two charges, he was held partly guilty. Thus, report of the Enquiry Officer was accepted for all practical purposes by the disciplinary authority who imposed punishment set out hereinabove.

3. It needs however to be recorded that the disciplinary authority, viz., the Govt. of Maharashtra in School Education & Sports Department (26th July 2006) differed from the findings of the Enquiry Officer insofar as the exoneration of the applicant from two charges above referred are concerned. However, at the end of the day, the punishment as mentioned hereinabove came to be imposed.

4. The present O.A. has challenged the impugned order and action of the respondents on various ground including the conduct of the enquiry being in violation of the elementary principles of natural justice. Now for the reasons to be presently set out, it is not necessary for us to examine all aspects of the matter. We must at this stage itself make it clear that insofar as jurisdiction of this Tribunal is concerned in the matters like the present one, it is of judicial review of administrative action. This is not an appellate jurisdiction.

5. As a matter of fact, appeal is provided by the relevant rules in case the punishment set out hereinabove is imposed. In this connection, we may make a reference to Rule 17 of the M.C.S. (Discipline and Appeal) Rules, 1979. The applicant admittedly has not taken recourse to the appellate remedy. We may make useful reference to Section 20 of the Administrative Tribunals Act, 1985 which *inter alia* provides that the Administrative Tribunal shall "not

ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under relevant service rules as to redressal of the grievance". It is no doubt true that the words 'ordinarily' brings in its wake, the possibility of the Tribunal entertaining an application even if the other remedies were not exhausted. But reading the sub-rule in its totality, it is clear that the essential harp is that all the remedies must be exhausted. We do not have to enter into the academics of the matter. As far as the present facts are concerned, there is nothing extraordinary as it were, to depart from the general course of action enunciated by the above referred Section 20. Even otherwise on the first principle of law, if the appeal is provided by the statute that, it is significant because for all practical purposes appellate avenue is final forum of facts, because as already mentioned above, the Tribunal in exercise of its limited jurisdiction is not legally free to travel to the factual aspect outside the jurisdictional limitation. Therefore, with regard to all facts and circumstances of the matter and recording our consciousness that this matter has been pending from 2006 and requires early final determination, we perhaps are not in a position to do what Mr. Khan, the learned counsel for the applicant would want us to do here and now. One aspect of the matter is, in case we were to have a free foray into the facts and we were to find one way or the other, it is possible

that even the applicant, in the event of an adverse findings would have lost one forum and that too of a very important nature, viz., the appellate forum. That being the state of affairs, we have no other alternative but to dispose of this O.A. in the manner indicated herein below.

6. Now, as far as challenge to Rule 68 is concerned, we express no opinion thereabout. It needs only to be mentioned that pending departmental enquiry, the applicant was apparently suspended and although he came to be reinstated lateron, he is aggrieved by certain acts of omission and commission by the respondents during the period of suspension and it is in that connection that Rule 68 is being questioned on the constitutional anvil. Now it is very clear to us that regard being had to the nature of the two claims important one being the matter of enquiry, this O.A. presents a case of what in the realm of Civil law can be described as misjoinder of cause of action and, therefore, we make it clear that we have not put on the constitutional anvil the Rule 68. If law permits it, it would be open to the applicant to challenge it as advised in the manner known to law. We leave it at that.

7. Insofar as the first aspect of the matter is concerned, this O.A. stands disposed of with a direction that if the applicant were

to present a memo of appeal to the appropriate appellate authority within four weeks from today, the appellate authority shall deal with the appeal, in the manner prescribed by law. All points are left open and no party including the respondents get concluded by any of the observations hereinabove. It is clarified that we have expressed no opinion on the merit of the departmental enquiry. If the applicant fails to prefer an appeal within four weeks from today, this O.A. shall be taken to have been dismissed subject of course to the Rule 68 aspect of the matter discussed above.

No order as to costs.

True Copy


Assistant Registrar

19/5/2016

**Maharashtra Administrative Tribunal
Nagpur**

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