IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

ORIGINAL APPLICATION NO.732 OF 2019

DISTRICT : PUNE
Sub.:- Dismissal from service

Smt. Chhaya Govind Mantri.)
Age : 59 Yrs, Occu.: Nil,)
R/o. Flat No.303, Lake Town Co-op. Hsg.)
Society, Katraj, Pune – 411 037.)**...Applicant**

Versus

1. The State of Maharashtra.)
Through Secretary (Revenue),)
Revenue & Forest Department,)
Mantralaya, Mumbai – 400 032.)

2. The Settlement Commissioner and)
Director of Land Records, M.S,)
Pune.)

3. The Deputy Director of Land Records)
Pune Region, Pune.)**...Respondents**

Shri C.T. Chandratre, Advocate for Applicant.

Smt. S.P. Manchekar, Chief Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J
DEBASHISH CHAKRABARTY, MEMBER-A

DATE : 25.08.2023

PER : A.P. KURHEKAR, MEMBER-J

JUDGMENT

1. The Applicant has challenged the order dated 23.03.2018 passed by Respondent No.3 – Deputy Director of Land Records/disciplinary

authority whereby she is dismissed from service and also challenged the order dated 07.08.2018 passed by Respondent No.2 – Settlement Commissioner and Director of Land Records whereby appeal came to be dismissed.

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

The Applicant was Record Keeper in the Office of City Survey Office, Pimpari-Chinchwad and was entrusted with levying of measurement fees/charges on the applications made for the measurement of the Plot. She worked as Record Keeper from 05.06.2000 to 05.07.2005. The Respondent No.3 – Deputy Director of Land Record received one complaint dated 10.11.2006 from Sachin S. Bhosle about charging of less fees than prescribed and monetary loss to the Government. Pursuant to it, the Respondent No.3 appointed one Committee consists of Shri Nirbhavane, City Survey Officer, Shri Chavan, City Surveyor and Shri Matal, City Surveyor to verify the record and to submit report. Accordingly, Committee examined the record for the period from 05.06.2000 to 05.07.2005 and found that the Applicant has charged less fees in contravention of the Circulars issued by the Department in this behalf prescribing the rates of measurement and thereby caused monetary loss to the Government. Consequent to it, the Respondent No.3 issued charge-sheet dated 06.04.2010 to the Applicant for initiation of departmental enquiry (DE) under Rule 8 of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (hereinafter referred to as 'D & A Rules of 1979' for brevity) for negligence and dereliction in duties, which is in breach of Rule 3 of Maharashtra Civil Services (Conduct) Rules, 1979 (hereinafter referred to as 'Conduct Rules of 1979' for brevity). The Applicant submitted reply to the charge-sheet denying the charges with a defence that the charges levied by her was correct. In departmental proceedings, the Enquiry Officer conducted the enquiry, examined 4 witnesses which were cross-examined by the Applicant. The Enquiry Officer submitted report holding the Applicant guilty for the

charges framed against her. On receipt of it, the disciplinary authority issued show cause notice to which Applicant gave her reply denying the charges and reiterated that the charges were correct and there was no loss to the Government. The Respondent No.3, however, accepted the report of Enquiry Officer and in view of huge loss caused to the Government imposed punishment of dismissal from service by order dated 23.02.2018. Appeal preferred against it came to be dismissed by Respondent No.2 on 07.08.2018. The Applicant has, therefore, challenged the order of disciplinary authority and appellate authority by filing this O.A.

3. Shri C.T. Chandratre, learned Advocate for the Applicant sought to assail the legality and correctness of the impugned orders on the following grounds :-

(i) The Applicant has charged the fees correctly in terms of Circulars issued by the Government in this behalf.

(ii) The Enquiry Officer has not questioned the Applicant at the end of enquiry giving him opportunity on the circumstances appearing against him and the evidence enabling her to explain such circumstances as contemplated under Rule 8(20) of 'D and A Rules of 1979'.

(iii) In alternative, he submits that at the most it could be error in understanding the Circulars for charging less fees and there was no such intention or motive to cause monetary loss to the Government.

(iv) The punishment of dismissal hardly a week before attaining the age of superannuation is disproportionate to the charges levelled against the Applicant, since the Applicant has not obtained any personal monetary gain and had unblemished service record.

4. Per contra, Smt. S.P. Manchekar, Chief Presenting Officer sought to justify the punishment of dismissal from service *inter-alia* contending that the Applicant though worked for near about five years and was bound to charge correct fees in terms of Circulars issued by the Department, she charged less fees and thereby caused monetary loss of Rs.66,64,200/- to the Government. She emphasized that the factum of charging less fees is clearly spelt out from the evidence of witnesses and the defence that she charges fees correctly is already negatived and turned down in the enquiry. The learned C.P.O has further pointed out that in appeal also, the appellate authority personally examined 5 matters and was satisfied that the fees charged by the Applicant was not as per the Circulars dated 30.10.2001 and 07.01.2002 which caused monetary loss of Rs.66,64,200/- to the Government. As regard non-questioning the Applicant at the end of enquiry as contemplated under Rule 8(20) of 'D and A Rules of 1979', she submits that it has not caused any such prejudice to the Applicant, and therefore, it is not fatal.

5. Since the Applicant is challenging the findings and punishment imposed in D.E., it needs to be borne in mind that the scope of judicial interference by Tribunal in such matter is very limited. In exercise of power of judicial review, the Tribunal cannot re-appreciate the evidence as an appellate authority unless it is shown that findings are patently perverse or based on no evidence or where principles of natural justice have been violated. In this behalf, it would be apposite to refer the decision of the Hon'ble Supreme Court in ***(2015) 2 SCC 610 Union of India Vs. P. Gunasekaran***. In para nos.12 and 13 of the judgment, the Hon'ble Supreme Court held as under :-

> **"*12.*** *Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. 1 was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether :*

(a) The enquiry is held by a competent authority;

(b) the enquiry is held according to the procedure prescribed in that behalf;

(c) there is violation of the principles of natural justice in conducting the proceedings;

(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence."

*"**13.** Under Article 226/227 of the Constitution of India, the High Court shall not :*

(i) re-appreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience."

6. The same legal principles were again reiterated by Hon'ble Supreme Court in ***2022 Live Law (SC) 998 [Subrata Nath Vs. Union of India & Ors.]***. In Para No.22, Hon'ble Supreme Court held as under :-

"***22.*** *To sum up the legal position, being fact finding authorities, both the Disciplinary Authority and the Appellate Authority are vested with the exclusive power to examine the evidence forming part of the inquiry report. On finding the evidence to be adequate and reliable during the departmental inquiry, the Disciplinary Authority has the discretion to impose appropriate punishment on the delinquent employee keeping in mind the gravity of the misconduct. However, in exercise of powers of judicial review, the High Court or for that matter, the Tribunal cannot ordinarily reappreciate the evidence to arrive at its own conclusion in respect of the penalty imposed unless and until the punishment imposed is so disproportionate to the offence that it would shock the conscience of the High Court/Tribunal or is found to be flawed for other reasons, as enumerated in P. Gunasekaran (supra). If the punishment imposed on the delinquent employee is such that shocks the conscience of the High Court or the Tribunal, then the Disciplinary/Appellate Authority may be called upon to re-consider the penalty imposed. Only in exceptional circumstances, which need to be mentioned, should the High Court/Tribunal decide to impose appropriate punishment by itself, on offering cogent reasons therefor."*

7. Bearing in mind the aforesaid legal principles, now question posed for our consideration is whether order of disciplinary authority confirmed by Appellate Authority needs interference by the Tribunal on the ground urged by the learned Advocate for the Applicant.

8. The foremost contention of the learned Advocate for the Applicant is that the Applicant has charged the fees correctly and there was no such negligence on her part in levying measurement fees. Thus, according to her, the charge of levying less measurement fees for the measurement of plots is totally incorrect. In this behalf, the perusal of defence statement filed by the Applicant before Enquiry Officer reveals that she has charged fees for particular plot only out of Survey Number/City Survey Number and according to her, there was no such need to charge measurement fee for entire parcel of land. However, before Enquiry Officer or even before Appellate Authority, she could not demonstrate or substantiate how the fees charged by her was correct. Indeed, before initiation of regular DE, the Committee consists of 3 persons from Department was constituted to examine the measurement cases from 05.06.2000 to 05.07.2005 and Committee submitted it's report dated 03.02.2007, which is at Page Nos.36 to 60 of Paper Book

giving details of the cases showing fees required to be charged and fees charged by the Applicant. The Committee examined these cases in the light of Circulars dated 30.10.2001 and 07.01.2002 issued by the Department, which prescribes the fees to be charged for the measurement. The Committee calculated loss of Rs.52,80,300/- to the Government because of less charging of the fees by the Government. In regular DE, these Committee Members viz. Shri Nirbhavane, Shri Chavan and Shri Matal were examined and they reiterated that the fees charged by the Applicant was not as per the Circulars issued by the Department from time to time. Notably, before Enquiry Officer also, all that Applicant contends that the fee was correctly charged. However, she could not demonstrate as to how fees charged by her was correct. There is no such specific and pointed cross examination on this point, so as to elicit any such material from the witnesses that the fees charged by the Applicant was correct.

9. The perusal of record of Enquiry Officer (Page Nos.122 to 135 of P.B.) also reveals that he did not accept the defence that the fees charged by the Applicant was correct. Notably, Enquiry Officer was District Superintendent of Land Record, who is well-versed with the procedure of levying the charges for the measurement of land and turned down the defence raised by the Applicant. That apart, Enquiry Officer himself also examined 17 matters as a sample cases to satisfy itself about levying of charges and found that the Applicant has charged less fees than required charges. The disciplinary authority also considered the defence raised by the Applicant, but find no substance therein. Ultimately, disciplinary authority accepted the report of Enquiry Officer and recorded the finding that Applicant has caused loss of Rs.66,64,200/- to the Government.

10. True, as per three persons' committee report, the Applicant has caused loss of Rs.52,80,300/- to the Government by levying less charges. It appears that after submission of report of three persons' committee, some more cases were surfaced, and therefore, loss was quantified to the

tune of Rs.66,64,200/- and accordingly, charge-sheet was issued for loss of Rs.66,64,200/- to the Government in 344 ordinary measurement cases, 180 urgent measurement cases and 116 very urgent measurement cases. In 344 cases, there was loss of Rs.24,52,550/-, in 180 cases, there was loss of Rs.20,40,500/- and in 116 cases, there was loss of Rs.22,01,150/-, which comes to Rs.66,64,200/-.

11. The Appellate Authority also considered the defence raised by the Applicant and not only that, the Appellate Authority personally scrutinized 5 measurement cases as sample cases to satisfy itself and found that the charges levied by the Applicant for measurement was not in terms of revised Circulars dated 30.10.2001 and 07.01.2002 which were issued in supersession of earlier Circular dated 04.02.1999.

12. 12.As per Clause 5 of Circular dated 30.10.2001, the measurement fee was to be charged for consolidated land and not for piece of land. Clause No.5 is as under :-

> "५. अर्जदार यांनी मोजणी अर्जासोबत जोडलेल्या अधिकार अभिलेखाप्रमाणे (७/१२ प्रमाणे) भूमि अभिलेख (फाळणी अभिलेख) झालेले नसल्यास संबंधित सर्वे नंबर अगर हिश्यातील सर्व उपविभागाची मोजणी करुन अभिलेख दुरुस्ती, फाळणी द्वारा करण्याकरिता मोजणीसाठी अर्जदार यांच्याकडून त्यांच्या जमिनीचे मोजणीकामी वरील परिच्छेद मध्ये नमूद केलेप्रमाणे मोजणी फी आकारण्यात यावी. शिवाय मोजणी करावयाची इतर धारकांचे सर्व विभागाकरिता प्रत्येक उपविभागासाठी (प्रत्येक हेक्टर पर्यंत मर्यादित क्षेत्रास ४००/- रुपये याप्रमाणे मोजणी फी आकारणी करून एकत्रित मोजणी फी अर्जदार यांच्याकडून घेण्यात यावी.''

13. Later, by clarificatory Circular dated 07.01.2002, following charges are made :-

> "२) आदेशातील परिच्छेद २, ३ व ४ मध्ये साधी, तातडी व अतितातडी मोजणी फी च्या तपशिलामध्ये पुढील प्रमाणे सुधारणा करण्यात येत आहे.
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> २.१ परिच्छेद २, ३ व ४ मधील अ-१ उप परिच्छेदामध्ये ''एका धारकाचे पहिले १ हेक्टर मर्यादेपर्यंत'' या ऐवजी एका किंवा समान धारकाचे पहिल्या एक सर्वेनंबर / गट नंबर /पोटहिस्सा नंबर / मंजूर रेखांकनातील एका प्लॉटसाठी, १ हेक्टर क्षेत्राचे मर्यादेपर्यंत'' असे वाचावे.
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> २.२ परिच्छेद २, ३ व ४ मध्ये अ-२ उप परिच्छेदामध्ये ''पुढील प्रत्येक हेक्टर क्षेत्र अथवा त्याच्या भागास'' ऐवजी ''त्याच मिळकतीमधील उर्वरित क्षेत्राच्या पुढील प्रत्येक हेक्टर क्षेत्रास अथवा त्यांच्या भागास व त्याच एका किंवा समानधारकांच्या त्याच स.नं./ग.नं. पैकी पुढील पोटहिस्सा नंबर / मंजूर रेखांकनातील प्लॉटसाठी १ हेक्टर क्षेत्राच्या मर्यादेपर्यंत अथवा त्याच्या भागास'' असे वाचावे.

२.३ परिच्छेद २, ३ व ४ मधील ब-१ उप परिच्छेदामध्ये ''महानगरपालिका व नगरपालिका / परिषद क्षेत्रातील प्रत्येक मिळकतीस'' या ऐवजी नागरी कमाल जमीन धारणा कायदा'' ज्या महानगर पालिकेस लागू आहे. अशा महानगर पालिकेच्या हद्दीमधील एका किंवा समान धारकाच्या प्रत्येक मिळकतीच्या १० आर किंवा १००० चौ.मी. क्षेत्रापर्यंत व अन्य महानगर पालिका व नगरपरिषद / पालिका हद्दीमधील एका किंवा समान धारकाच्या प्रत्येक मिळकतीच्या २० आर किंवा २००० चौ.मी. क्षेत्रापर्यंत'' असे वाचावे.

२.४ परिच्छेद २, ३ व ४ मधील ब-२ उप परिच्छेदामध्य ''प्रत्येक लगत जादा मिळकतीस'' ऐवजी ''त्याच मिळकती मधील उर्वरित क्षेत्रासाठी नागरिक कमाल जमीन धारणा कायदा ज्या महानगर पालिकेस लागू आहे अशा महानगर पालिका हद्दीमधील पुढील प्रत्येक १० आर किंवा १००० चौ.मी. क्षेत्राचे मर्यादेपर्यंत व अन्य महानगर पालिका, नगर परिषदा / नगरपालिका हद्दीमधील २० आर किंवा २००० चौ.मी. क्षेत्राचे मर्यादेपर्यंत किंवा त्याच्या भागास आणि त्याच एका किंवा समान धारकांच्या लगत / जादा मिळकतीस'' असे वाचावे."

14. From the aforesaid Circular, it is quite clear that where land is not independently recorded with distinct Survey Number/Plot Number and it is only 1st Pot Hissa without demarcation, in that event, the measurement fee has to be charged for entire Survey Number. However, the Applicant has charged fees only for one piece of land, which was part of one big Survey Number though that part of land for which application is made for measurement is not distinctly demarked with independent Plot Number, which is not as per the Circulars referred to above.

15. Here, it would be apposite to see the understanding of the Applicant as contended in final defence statement, which is as under :-

"मोजणी फी ची आकारणी करताना/माहिती काढताना फक्त ७/१२ वरील संपूर्ण क्षेत्राचा विचार केला आहे. वास्तविक अर्जदाराच्या नावापुढे नमूद असलेल्या क्षेत्राचा विचार करणे आवश्यक आहे. ७x१२ किंवा मिळकत पत्रिकेवरील क्षेत्राचा विचार करून अर्जदारांना जागा मोकळी करून नकाशा दिला असता तर अर्जदारांनी मोजणीकरिता अर्ज केले नसते किंवा अर्जदाराचे क्षेत्र किती ? हे संदिग्ध झाले असते आणि त्याचा उपयोग सरकारी कामासाठी/बांधकामासाठी/खरेदी विक्रीसाठी झाला नसता व असा निरुपयोगी नकाशा देऊन खातेदारांचे काम झाले नसते व हे भूमी अभिलेख खाते निरुपयोगी व त्रासदायक आहे अशी प्रतिमा जनमानसात निर्माण झाली असती."

16. It is thus apparent that the Applicant has not charged measurement fees correctly because of her wrong understanding, which according to her is correct. However, it is not so. The Applicant worked for five years and she ought to have taken some guidance from the superior about the correct charges instead of going by her incorrect understanding. Only because less levying of measurement fees was continued for five years without any objection by anybody else or superior Officer, that itself would not legalize her stand that what she

charged was correct. Wrong is always wrong and it cannot be turned into right only because it continued for a long time.

17. That apart, it is well settled principal of law in domestic enquiry matter, if the finding of fact is supported by some evidence, Tribunal cannot interfere into the findings based on facts and cannot substitute it's own opinion. The scope of judicial review is very limited. The conclusion of disciplinary authority and appellate authority is also reinforced in view of the action initiated by the Department for recovery of deficit measurement fees from the Plot Owners. The perusal of record reveals that sum of Rs.3,98,500/- in 82 matters has been recovered and remaining amount is still unrecovered.

18. The submission advanced by the learned Advocate for the Applicant that deficit measurement fees can be recovered from the Plot Owners is no ground to claim exoneration from the charges levelled against the Applicant. Even if entire amount of deficit measurement fees would be recovered, in that event also, that *ipso-facto* could not give clean chit to the Applicant, since she failed to charge correct fees in terms of Circulars issued by the Department which amounts to negligence and lack of devotion in discharge of duties by public servant.

19. Though Applicant was harping that what she charged was correct, she has not produced any other material on record to substantiate that in any other Offices of land record, measurement fees are charged in the manner she did so as to substantiate her defence that what she charged is correct.

20. The submission advanced by the learned Advocate for the Applicant that it could be the case of error of Judgment on the part of Applicant and it cannot be construed as misconduct is totally fallacious. It is a case of negligence while charging the measurement fees, which caused huge loss to the Government. Thus, this is not a case of

simplicitor negligence without any consequences, so as to give clean chit to the Applicant. This being so, the reliance placed on ***2007 AIR SCW 2532 [Inspector Prem Chand V/s. Government of N.C.T. of Delhi & Ors.]*** is totally misplaced. In that case, the Appellant was Raiding Officer, but did not seize the tainted as case property and there was failure to bring an important piece of evidence on record, which resulted into acquittal of the accused in criminal case. Therefore, in fact situation, it was held that negligence simplicitor could not be a misconduct.

21. Similarly, reliance placed by learned Advocate for the Applicant on ***(2009 1 SCC (L & S) 398 [Roop Singh Negi Vs. Punjab National Bank & Ors.]*** is totally misplaced. In that case, FIR was tendered as evidence without examining the witness. It is in that context, Hon'ble Supreme Court held that it was a case of no evidence to sustain punishment imposed in DE, since contents of the documents was required to be proved by examining the witness and FIR itself is not evidence without actual proof of facts stated therein. Whereas in the present case, in DE, four witnesses were examined to prove the factum of levying of less measurement charges. The Applicant did not examine defence witness to substantiate that what she charged was correct and it was as per the Circulars issued by the Department.

22. Another submission advanced by the learned Advocate for the Applicant that the Department has not taken similar action against other delinquents and Applicant is made scapegoat or victimized is devoid of any substance. The learned CPO has pointed out that departmental action was also initiated against Shri P.A. Patil, but he died on 24.10.2016, and therefore, DE abate. The departmental action initiated against P.M. Lokare, Sheristedar also abate in view of his death during the pendency of DE. Whereas in DE against Shri D.S. Sonawane for levying less measurement charges, he was subjected to punishment of recovery of Rs.1,32,500/- from the salary and retiral benefits. In DE

initiated against Shri D.M. Shinde for charging less measurement charges also punishment of recovery of Rs.2,92,500/- was imposed. All these delinquents were serving in the same Office at Pimpri-Chinchwad and they were subjected to departmental proceedings. As such, the contention that Applicant is alone victimized is totally incorrect.

23. Shri C.T. Chandratre, learned Advocate for the Applicant also raised the issue of non-compliance of Rule 8(20) of 'D & A Rules of 1979'. True, the perusal of record reveals that Enquiry Officer has not questioned the Applicant, as contemplated under Rule 8(20) of 'D & A Rules of 1979'. However, mere non-examination of delinquent itself cannot be the ground to quash the punishment unless prejudice is shown caused to the delinquent. Unless prejudice is demonstrated and shown to have been caused, the non-examination of the delinquent cannot be said fatal.

24. In this behalf, it would be apposite to refer the decision of the Hon'ble Supreme Court in ***AIR 1980 SC 1170 (Sunil Kumar Benarjee V/s State of West Bangal)***. In that case, the Apex Court examined the same issue of failure of Enquiry Officer to examine the delinquent at the end of inquiry under Rule 8(19) of "All India Services (Discipline & Appeal) Rules 1955" which is *pari materia* with Rule 8(20) of 'D & A Rules of 1979'. The Hon'ble Apex Court held as under :-

> "*It may be noticed straightaway that this provision is akin to Section 342 of the Criminal Procedure Code of 1898 and Section 313 of the Criminal Procedure Code of 1974. It is now well established that mere non-examination or defective examination under Section 342 of the 1898 Code is not a ground for interference unless prejudice is established, vide K.C.Mathew v. the State of Travancore-Cochin, (1955) 2 SCP 1057: (AIR 1956 SC 241), Bibhuti Bhusan Das Gupta v. State of West Bengal, (1969) 2 SCR 104: (AIR 1969 SC 381). We are similarly of the view that failure to comply with the requirements of rule 8(19) of the 1969 rules does not vitiate the enquiry DSS 13 Judgement-cwp-865-05.doc unless the delinquent officer is able to establish prejudice. In this case the learned single judge of the High Court as well as the learned Judges of the Division Bench found that the appellant was in no way prejudiced by the failure to observe the requirement of Rule 8(19). The appellant cross-examined the witnesses himself, submitted his defence in writing in great detail and argued the case himself at all stage. The appellant was fully alive to the allegations against him and dealt with all aspects of the*

allegation in his written defence. We do not think that he was in the least prejudiced by the failure of the Enquiry officer to question him in accordance with rule 8(19)."

25. The same issue again came before the Hon'ble High Court in ***Writ Petition No.865/2005 (B.M. Mittal Vs. Union of India) decided by Division Bench on 26.09.2018*** in which taking note of the decision of the Hon'ble Supreme Court in ***AIR 1980 SC 1170 (Sunil Kumar Benarjee V/s State of West Bangal)***, the contention of prejudice for non-examination of delinquent was turned down and order of punishment was maintained.

26. Now turning to the facts of the present case, the Applicant has filed reply of the charge-sheet, cross-examined the witnesses and also filed defence statement. All that, her defence was that what she charged is correct as per the Circulars. Her defence has been turned down by Enquiry Officer, Disciplinary Authority by Appellate Authority, having found that the measurement charges levied by the Applicant was very less and it caused huge loss to the Government. It is finding of fact and correct interpretation of Circulars. Therefore, no prejudice can be said caused to the Applicant by non-examining her under Order 8(20) of 'D & A Rules of 1979'. All that, even if she was questioned under Rule 8(20) of 'D and A Rules of 1979', she would have stated same thing that what she charged was correct. Suffice to say, in view of law laid down by Hon'ble Supreme Court in ***Sunil Kumar Benarjee's*** case (cited supra), the non-examination of Applicant itself is not fatal to vitiate the findings.

27. Now turning to the point of proportionality of sentence, the learned Advocate for the Applicant urged that at the most, it could be a case of non-understanding the Circulars properly, and therefore, the punishment of dismissal from service for such charge is disproportionate. It is well settled that the Tribunal shall not go into the proportionality of punishment unless it shocks it's conscience. We see some substance in the submission, as it is not a case of obtaining any

monetary gain by the Applicant by charging less measurement fees. But we should not be oblivious of the fact that it caused huge loss to the Government. The Applicant stands retired on 28.02.2018 and the punishment of dismissal was imposed hardly week before on 23.02.2018. There is nothing on record to indicate that she committed similar mistake or any other misconduct during her entire service. Thus, except the impugned punishment, her service record seems to be unblemished. Therefore, in our considered opinion, the punishment of dismissal is rather disproportionate. Normally, Tribunal should not substitute the sentence and if punishment is disproportionate and shocks it's conscience, the matter is required to be remitted back to the Appellate Authority for passing appropriate lesser punishment. However, Tribunal can do so to shorten the litigation in deserving cases. The period of more than five years from the date of punishment is over. As such, considering all these facts and circumstances, in our considered opinion, the punishment of dismissal is harsh and disproportionate and it needs to be modified into punishment of compulsory retirement under Rule 5(vii) of 'D & A Rules of 1979', so that she could get some succor. In fact and circumstances, we deem it appropriate to modify the punishment of dismissal into compulsory retirement.

28. The totality of aforesaid discussion leads us to conclude that the punishment of dismissal from service is harsh and disproportionate and liable to be set aside. It is substituted in punishment of compulsory retirement. Hence, the following order.

O R D E R

(A) The Original Application is allowed partly.

(B) The order of dismissal from service dated 23.03.2018 as well as order of Appellate Authority dated 07.08.2018 are quashed and set aside.

(C) The punishment of dismissal from service is substituted into punishment of compulsory retirement under Rule 5(vii) of 'D & A Rules of 1979'.

(D) No order as to costs.

Sd/-
(DEBASHISH CHAKRABARTI)
Member-A

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

Mumbai
Date : 25.08.2023
Dictation taken by :
S.K. Wamanse.
D:\SANJAY WAMANSE\JUDGMENTS\2023\August, 2023\O.A.732.19.w.8.2023.Dismissal from service.doc

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