

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.85 OF 2016

DISTRICT : PUNE

Ravindra Pandurang Pimpalgaonkar.)
Age : 51 years, Occu.: Cooperative Officer)
Grade II, Residing at Plot No.79,)
Maheshwari Society, Sahakarnagar No.2,)
Pune - 411 009.)...Applicant

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Co-operation Textile Department,)
Mantralaya, Mumbai - 400 032.)
2. The Commissioner of Co-operation &)
Registrar of Co-operative Societies,)
M.S, Pune Central Building,)
Pune 411 001.)...Respondents

**Ms. Anita Murgude holding for Ranjana Todankar, Advocate
for Applicant.**

Ms. N.G. Gohad, Presenting Officer for Respondents.

CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)

R.B. MALIK (MEMBER-JUDICIAL)



DATE : 23.11.2016

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

JUDGMENT

1. This expedited Original Application (OA) relates to a pending departmental enquiry (DE) against a Co-operative Officer Grade II. The 1st Respondent is the State of Maharashtra in Textile Department. The 2nd Respondent is the Commissioner of Co-operation and Registrar of Co-operative Societies, Pune and the 3rd Respondent is the Divisional Joint Registrar of Co-operative Societies.

2. We have perused the record and proceedings and heard Ms. Anita Murgude holding for Ms. Ranjana Todankar, the learned Advocate for the Applicant and Ms. N.G. Gohad, the learned Presenting Officer for the Respondents.

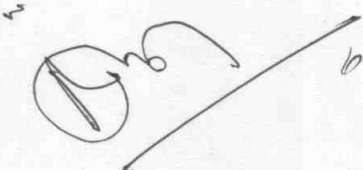
3. The orders herein impugned are dated 14.12.2015 and 18.1.2016. By the 1st order issued by the 3rd Respondent, it was mentioned that when the Applicant working probably on deputation in the Pune Bench of the Maharashtra Co-operative Appellate Court, there were allegations of misconduct against him. Shri H.L. Pawar was appointed as Enquiry Officer (EO), but he recused



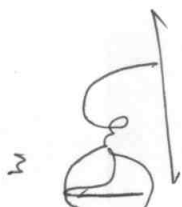
himself on the ground of pressure of work, and therefore, by the 2nd order, a retired Principal District and Sessions Judge came to be appointed as such Enquiry Officer. That order was also signed by the official holding the post of the 3rd Respondent. The relief claimed is for quashing and setting aside of both these orders. Interim relief of stay was also sought. After hearing the OA, by our order of 8.11.2016, we stayed the further proceedings in the pending DE and now it is being finally disposed of.

4. It is very pertinent to note that taking the prayer clause as it is, the relief of quashing of the charges is not either expressly or by implication sought. Even otherwise, although the power to quash the charge-sheet is there within the judicial competence of the judicial authority, but it will not be a common place order to be made just for the asking and judicial forum shall be ever so slow in quashing the charge-sheet in circumstances like these.

5. That being the state of affairs, we may note that initially the charge-sheet was three pronged (Page 45 of the Paper Book (PB)). The first charge was that during the period 21.11.2014 to 27.2.2015 while working at Pune Bench of the Co-operative Appellate Court, the Applicant accepted the amount towards issuance of certified copies,

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but did not deposit them in time. He also recovered excess amount and did not maintain the degree of integrity required for his post and fell foul of Rule 3(1) of the Maharashtra Civil Service (Conduct) Rules, 1979. Very pertinently, even as we have carefully perused the entire record, we find no documentary support to sustain this charge. As for now, we would leave it at that though it is possible that before concluding, we may give certain directions to the EO in this behalf. The 2nd charge was that the Applicant did not issue the receipts for the amount received for certified copies and the breach of the same rule mentioned above was invoked. The 3rd charge was that the Applicant misbehaved with his colleagues. Thereafter, the enquiry, in the manner of speaking proceeded but after passing the 2nd impugned order, two more charges were added, making them 5 in all. The newly added 4th charge was that despite notice of the hearing of the DE, the Applicant did not remain present and the 5th charge was that while working at Daund, his conduct was such as not to behave a senior experienced employee. His relations with common public were strained and unbecoming. Again there is a lot that could be said about the manner in which these two additional charges were added. As of now, we would not mention anything more about it for the reasons already set out hereinabove.

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6. The record shows that the enquiry went underway and a couple of witnesses came to be examined. We would advisedly not examine in detail the statements of the said witnesses because ultimately, we shall be pointing out as to how their worth is nil. The record shows that even as the enquiry went underway presided over by the new EO, the repeated request of the Applicant to furnish him the documents was not granted and no plausible reason was given for not granting it. On 118.3.2016, the Applicant moved before the EO what has been marked as "Exh. 16" (Page 105 of the PB). It is in Marathi. The Applicant addressed it to the EO. He mentioned therein that by his communication of 16.2.2016, 4.3.2016 and 5.3.2016, he had requested for the documents for the enquiry, which he had not received till that date. He further mentioned that no opportunity was given to him to explain his position vis-à-vis the charges nor was any opportunity given to him to file a reply thereto. He craved for such an opportunity in the interest of natural justice and only thereafter, the witnesses should be examined. The EO asked the other side to say and the Presenting Officer mentioned in Marathi that during the hearing, opportunity was given to the Applicant. But even that say does not mention as to whether documents were actually furnished to him and taking it as it is, the so called

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opportunity was given during the hearing and not before the hearing commenced.

7. Thereafter, the EO made an order, a copy of which is at Page 104 of the PB. We would reproduce the same for the sake of facility.

“१. अर्जदाराने सदरचा अर्ज त्यांना दि.१४.१२.२०१५ व १८.०१.२०१६ रोजी जे चौकशी आरोप व दोषारोप दिले त्यासंबंधी खुलासा देण्याची संधी दिली नाही ती देण्यासाठी मुदत दयावी व त्यानंतर साक्षिदाराची तपासणी व्हावी अशा संदर्भाचा अर्ज आहे.

२. सादर कर्ते अधिकारी यांनी त्यात त्यांना संधी दिली आहे असे म्हटले.

३. दोघांचेही म्हणणे ऐकले.

४. चौकशी अधिकारी यांची नेमणूक सक्षम अधिकारी यांनी ठेवलेले दोषारोप शाबीत होतात की नाही हे पाहण्यासाठी आहेत. असे पाहताना चौकशी अधिकारी यांची जबाबदारी आहे की, त्यांनी अपचारी यांना नैसर्गिक न्याय तत्वाला धरून दोषारोपाबद्दल त्यांना जे म्हणावयाचे आहे ते म्हणावयाला संधी दयावयास हवी अशी संधी देताना अपचारी यांनी अधी संधी दयावी आणि मग चौकशी पुढे सुरु ठेवावी असे म्हटले आहे त्यात तथ्य नाही.

५. अपचारी यांच्या विरुद्ध सादरकर्ते अधिकारी जो तोंडी पुरावा साक्षिदारांमार्फत सादर करतात त्यांची उलटतपासणीत अपचारी हे त्यांचे म्हणणे मांडू शकतात त्याशिवाय अपचारी यांच्या पुराव्यानंतरच्या जबाबात ते त्यांचे म्हणणे मांडतात. अपचारी हे लेखी टीपणीही देऊ शकतात या सर्व गोष्टी त्यांना त्यांच्यावर ठेवलेले दोषारोप कसे चुकीचे आहेत हे दाखवता येते. त्यामुळे त्यांच्या अर्जात काही एक तथ्य नाही म्हणून खालीलप्रमाणे हुकूम करतो.”

8. Now, it is very clear from the order just referred that the central issue may not have been met with squarely. It is not possible to comprehend as to what precisely was sought to be conveyed by clause 4 above referred and if clause 5 wants to convey that the Applicant could later on avail of his right, then in our view, this view does not appear to be accurate. We shall now immediately turn to the relevant rules which are Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (D & A Rules.

9. Rule 8 falling in Part IV of the D & A Rules lays down the procedure for imposing major penalties. Rule (12) and (13) need to be reproduced.

“(12) Where the Government servant applies orally or in writing for the supply of copies of the statements of witnesses mentioned in the list referred to in sub-rule (3) of this rule, the inquiring authority shall furnish him with such copies as early as possible, and in any case not later than three days before the commencement of the examination of the witnesses on behalf of the disciplinary authority.



(13) Where the inquiring authority receives a notice from the Government servant for the discovery or production of documents, the inquiring authority shall forward the same or copies thereof to the authority in whose custody or possession the documents are kept with a requisition for the production of the documents by such date as may be specified in such requisition to the case.

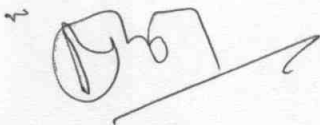
Provided that, the inquiring authority may, for reasons to be recorded by it in writing, refuse to requisition such of the documents as are, in its opinion, not relevant to the case.”

10. In fact, sub-rule 17 empowers the EO to even take additional evidence after the enquiry was closed, but even then, there are safeguards provided as the same nature as contained in Rule 8(12) and (13) for the delinquent. In our opinion, it is quite clear that furnishing of documents so as to enable the delinquent to effectively exercise his right of defence is too basic to be trifled and it is *sine-quo-non* for the validity of the enquiry under the provisions of the said Rules. That course of action was obviously not adopted by the EO and in our opinion, that

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goes to the root of the matter and whatever happened thereafter also suffered from the same vice, and therefore, the evidence in the form of statements, etc. would merely add to the weight of the record rather than contributing to its substance. The same will have to be ignored.

11. The upshot is that the conduct of the enquiry has been such as to deny to the Applicant right of making a proper defence after getting the necessary documents, and therefore, the clock will have to be set back and the DE even if it were to continue would get relegated to the point at which the charges were framed and furnished to the Applicant whatever happened thereafter including recording of statements, etc. are held non-est. We have already indicted above that we may give certain directions to the EO. We have refrained from making any final pronouncement on the nature of the charge such as it is. Now, that the matter will go back before the EO, we make it clear that the EO shall apply his mind to the issue as to whether the various heads of the charge such as they are, are such as to be enquired into further. In case, he finds that they are not such as to be enquired into, he will be free to make an appropriate order. But in any case, if he decides to go ahead the request for furnishing documents to the Applicant will have to be entertained in the manner

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provided by the Rules above referred to and then a proper opportunity to file a statement of defence will also have to be given to the Applicant.

12. The orders impugned herein are quashed and set aside making it clear that the directions herein contained including in the preceding Paragraph will have to be complied with. We do not give any direction to change the EO. The Original Application is allowed to this extent with no order as to costs.

Sd/-

Sd/-

(R.B. Malik)
Member-J
23.11.2016

(Rajiv Agarwal)
Vice-Chairman
23.11.2016

Mumbai

Date : 23.11.2016

Dictation taken by :

S.K. Wamanse.