

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.877 OF 2017

DISTRICT : NEW DELHI

Shri Sant Prasad Singh,)
Assistant Manager in the O/o Resident Commissioner,)
Government of Maharashtra, Maharashtra Sadan,)
New Delhi 110 001)..Applicant

Versus

1. Resident Commissioner,)
Government of Maharashtra,)
Maharashtra Sadan, Copernicus Marg,)
New Delhi 110 001)
2. Chief Secretary,)
Government of Maharashtra,)
Mantralaya, Mumbai 400 032)
3. Minister of State, G.A.D, Govt. of Maharashtra,)
Mantralaya, Mumbai 400 032)..Respondents

Shri K.R. Jagdale – Advocate for the Applicant

Smt K.S. Gaikwad – Presenting Officer for the Respondents

CORAM : Smt. Justice Mridula Bhatkar, Chairperson
Smt. Medha Gadgil, Member (A)

RESERVED ON : 6th March, 2024
PRONOUNCED ON: 21st March, 2024
PER : Smt. Medha Gadgil, Member (A)

J U D G M E N T

1. Heard Shri K.R. Jagdale, learned Advocate for the Applicant and Smt K.S. Gaikwad – Presenting Officer for the Respondents.

2. The applicant prays that the impugned order of dismissal dated 19.1.2013 passed by Respondent No.1 and the decision of the Appellate Authority dated 21.4.2015, passed by Respondent No.3, be quashed and set aside. Applicant further prays that he be granted promotion to the post of Manager w.e.f. 31.10.2009 with all consequential benefits and thereafter next promotion to the post of Assistant Resident Commissioner immediately after completion of three years' period on the post of Manager w.e.f. 1.11.2012. Further he prays that he should be paid all pensionary benefits, viz., Leave Encashment, Commutation of Pension, LTC etc. w.e.f. 1.2.2013 on the promoted post with penal interest.

3. At the outset, in view of the prayer, we are of the view that prayers (ii) & (iii) are beyond limitation as the Original Application was filed on 30.9.2017 and hence prayer (ii) & (iii) cannot be entertained and so also the prayer clause (iv). The only prayer that can be considered is challenge to the impugned order dated 19.1.2013.

4. Learned Advocate for the applicant refers to the notice dated 19.7.2011, wherein five charges were leveled against the applicant. The charges faced by the applicant are mainly on the point that he has not maintained the roster point at the time of recruitment process with ulterior motive and therefore committed breach of Rule 3(1)(i)(ii) and (iii) of

the Maharashtra Civil Services (Conduct) Rules, 1979. The applicant without verifying the Caste Certificates of such employees regularized their services. There was one issue regarding appointment of one Steno-Typist was not done as per the rules. The applicant also avoided to obey the orders of the higher officers.

5. Ld. Advocate for the applicant submits that following charges were framed against the applicant:

- (i) Violation of roster point in direct recruitment and deprive the reserved candidates of their rights.
- (ii) To make permanent to ineligible employee.
- (iii) Dereliction of duties in roster point.
- (iv) Violation of roster point in promotion to deprive the reserved category candidates of their right.
- (v) Causing harm to two eligible employees by leaving their name in the matter of advance increment.
- (vi) Dereliction of pay fixation.
- (vii) Dereliction in service rules resulting loss of employees.
- (viii) Not accepting the assigned responsibility and not obeying the Govt. orders intentionally.

6. Ld. Advocate for the applicant submits that due procedure was not followed in the DE. He also states that charges were vague and not based

on evidence. The applicant was dismissed arbitrarily by respondent no.1 vide order dated 19.1.2013. The applicant preferred statutory appeal on 28.2.2013 which was decided on 21.4.2015. The appellate authority upheld the dismissal order passed by the respondent no.1. He therefore prays that order was passed illegally and the issue of roster was a collectively responsibility. He states that more importantly a major charge against the applicant about violation of roster point in promotion depriving reserved category candidates of their rights was based on incorrect facts. He pointed out that the final approval for the roster was obtained from GAD only on 3.5.2013 whereas the alleged misconduct pertains to an earlier period.

7. Ld. PO opposes the submissions of the Ld. Advocate for the applicant and relies on the affidavit in reply dated 27.11.2017 filed by Samir Sahai, Additional Resident Commissioner, Maharashtra Sadan, New Delhi. He pointed out that the disciplinary proceedings under Rule 8 of the MCS (Discipline & Appeal) Rules, 1979 were conducted against the applicant. 4 charges were found proved by the enquiry officer and the findings of the enquiry officer were accepted by the disciplinary authority and major penalty of dismissal was imposed upon the applicant by the disciplinary authority. He mentioned that the applicant had erroneously interpreted the roster which led to the senior officers taking wrong decision. Ld. PO submits that due procedure was followed in the DE after which punishment of dismissal was imposed upon the applicant. Ld. PO relied on the judgment and order dated 19.11.2014 passed by the Hon'ble Supreme Court of India in Civil Appeal arising out of SLP (Civil) No.23621 of 2008 **Union of India & Ors. Vs. P. Gunasekaran.**

8. Considered the submissions of both the sides. In this case we rely on the ratio laid down in *P. Gunasekaran* (supra). The Hon'ble Supreme Court has pointed out that the High Court cannot act as an appellate

authority in the disciplinary proceedings and reappreciate the evidence before the enquiry officer. The Hon'ble Supreme Court observed in para 13 as under:

“13. 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. I 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 Article 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.”*

9. We need to consider the ratio of the judgments relied by the Ld. Advocate for the applicant, which are as under:

(i) Anant R. Kulkarni Vs. Y.P Education Society, (2013) 6 SCC 515. In this case the main issue is related to vague charges. It has been noticed that in the present case some of the charges are vague that is to say more particularly charges (vii) and (viii). Merely disobeying Government orders does not always amount to misconduct.

(ii) Sher Bahadur Vs. Union of India & Ors, AIR 2002 SC 3030. This case also relates to insufficiency or inadequate evidence.

(iii) Ved Prakash Gupta Vs. Delton Cable India (P) Ltd, (1984) 2 SCC 569. The main issue is relating to dis-appropriate punishment.

(iv) Roop Singh Negi Vs. P.N.B & Ors, (2008) Supp AIR (SC) 921. This matter revolves around the issue of order not being a reasoned order.

10. We are aware that we are not sitting in appeal while invoking the powers of judicial review. We cannot sift or weigh the evidence tendered before the Enquiry Officer. However, it is important to note that the major charge against the applicant is based on wrong facts. The first charge against the applicant was violation of roster point in direct recruitment and depriving the reserved candidates of their rights. In this regard we rely on the affidavit dated 5.3.2024 filed by Dr. Pratima Praveen Gedam,

Assistant Resident Commissioner (Administration), Maharashtra Sadan, New Delhi which reads as under:

“2. Maharashtra Sadan, New Delhi sent the letter for vetting its roster for promotion as well as direct recruitment to General Administration Department, Mantralaya on 26th September, 2003. The respondent has received the approval from the GAD for the said rosters on 3rd May, 2013 for the posts of Assistant Manager, Protocol Officer, Receptionist, Stenographer (Higher Grade), Stenographer (Marathi), Steno-Typist, Clerk-Typist and Telephone Operator.”

She also pointed out that the Resident Commissioner being notified as Head of Department as per GR dated 9.5.1997 is the appointing authority for these posts.

11. It is found that the major charge of violating the roster is not proved on the basis of the abovementioned affidavit. This affidavit clearly shows that the approval of the GAD for the roster was received only on 3.5.2013 whereas charges of breach of roster relate to an earlier period. Moreover, following of the roster was the collective responsibility of the office and the applicant cannot be held solely responsible for such administrative lapses. On their own admission the approval for the roster point came late and relying on the ratio in *P. Gunasekaran* (supra), we have no hesitation in setting aside the impugned order of dismissal dated 19.1.2013 of the applicant.

12. We have to be noted that the applicant has already retired on 31.3.2013. Hence, prayer clause 9 (ii) to (vii) cannot be considered. We restrict this order to prayer clause 9(i) to quash and set aside the

dismissal order dated 19.1.2013 and the appellate order dated 21.4.2015.
Hence, we pass the following order:

ORDER

- (A) The Original Application is allowed and the impugned dismissal order dated 19.1.2013 is quashed and set aside.
- (B) The respondents are directed to grant pension and all other consequential service benefits with arrears of pension with interest at the rate of 6 percent per annum.
- (C) This order is to be implemented within a period of three months from today.
- (D) No order as to costs.

Sd/-

(Medha Gadgil)
Member (A)
21.3.2024

Sd/-

(Mridula Bhatkar, J.)
Chairperson
21.3.2024

Dictation taken by: S.G. Jawalkar.