IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.928 OF 2019
With
ORIGINAL APPLICATION NO.937 OF 2019

DISTRICT: NASHIK

SUBJECT : PUNISHMENT OF REDUCTION IN PENSION & RECOVERY & SUSPENSION 'AS SUCH'

Shri Sameer Anandrao Dhamale,)
Aged 66 Years, Occ. Nil, Retired as)
Block Development Officer,)
R/o. Chintamani Nagar, Part III, Building No.A-1,)
Flat No.5, Behind Mahesh Society, Bibwewadi,)
Pune-37.)... **Applicant**

Versus

1) The State of Maharashtra,)
Through Principal Secretary,)
Rural Development Department,)
Having office at Mantralaya, Mumbai- 400 032.)

2) The Divisional Commissioner)
Nashik Division, Nashik.)...**Respondents**

Shri Arvind V. Bandiwadekar, learned Advocate for the Applicant.

Smt. Archana B. K., learned Presenting Officer for the Respondents.

CORAM : Shri A.P. Kurhekar, Member (J)

DATE : 11.01.2023

JUDGMENT

1. Both these Original Applications have filed by the Applicant Samir Dhamale retired Government servant. In O.A. No.937/2019, the Applicant has challenged the order dated 20.01.2018 issued by

Government whereby his period of suspension from 17.03.2007 to 31.05.2011 has been treated suspension 'As such' in view of his punishment imposed in D.E. Whereas in O.A.No.928/2019, the Applicant has challenged the order passed by the disciplinary authority dated 20.01.2018 whereby punishment of 6% reduction in pension for 1 year and recovery of Rs.23,172/- from Gratuity has been imposed and confirmed in Appeal decided on 05.11.2018. Both Original Applications heard together and being decided by common order.

2. The facts giving rise to O.A.928/2019 are as under :-

The Applicant was Block Development Officer, Panchayat Samiti, Ahmednagar, Dist. Ahmednagar from 26.08.2005. He stands retired on 31.05.2011. The Divisional Commissioner, Nashik by order dated 17.03.2007 suspended the Applicant in contemplation of D.E. on allegation that while he was working as Block Development Officer, Panchayat Simiti, Ahmednagar, he misappropriated Government grants meant for water supply for the year 2006-2007. Later, the Government initiated D.E. by charge sheet dated 04.08.2009 and Enquiry Officer came to be appointed. It was joint enquiry against 23 delinquents but the department issued separate charge sheet against the delinquents. In D.E., 13 charges were levelled against the Applicant. The Applicant participated in D.E. During the pendency of D.E., he stands retired on 31.05.2011. In D.E., 25 witnesses were cited. However, out of them 13 witnesses were examined. After conclusion of proceedings, the Enquiry Officer submitted report on 31.12.2016 with findings that charge nos.2 and 3 are partly proved and charge nos.9 and 11 are proved against the Applicant. Remaining charges held not proved. The copy of enquiry report was furnished to the Applicant to which he submitted explanation. The Government however by order dated 20.01.2018, accepted the report of Enquiry Officer holding the Applicant guilty in terms of report of enquiry officer and invoking Rule 27 of Maharashtra Civil Services (Pension) Rules, 1982, imposed punishment of deduction of 6% pension for one year and recovery of Rs.23,172/- from the

gratuity. Being aggrieved by it, the Applicant preferred an appeal which came to be dismissed on 05.11.2018 confirming the order of punishment imposed by the Disciplinary Authority.

3. Since the Disciplinary Authority has accepted the report of Enquiry Officer and imposed punishment against the Applicant, it would be unnecessary to see remaining charges and findings of Enquiry Officer in respect of those charges which he held not proved. The issue is restricted to the charge nos.9 and 11 held proved and charge no. 2 and 3 held partly proved.

4. At this juncture, it would be apposite to see charge nos.2 and 3 which were held partly proved and charge nos.9 and 11 held proved.

> "२. महाराष्ट्र शासन निर्णय क्र.टंचाई-२००२/प्र.क्र.२९०/पापु-१४, दिनांक १९/९/२००२ चे अनुपालन न करता जलवाहिन्यांची देयक अदा केल्याचे निष्पन्न झालेने महाराष्ट्र नागरी सेवा (वर्तणूक) नियम१९७९ मधील नियम क्र.३ चा भाग केला आहे.
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> ३. मा.आयुक्त नाशिक विभाग नाशिक यांचे परिपत्रक क्र.मशा/कार्या-२/३/टंचाई/८७८/२००० व दिनांक १८/४/२००१ अन्वये दिलेल्या आदेशांचे अवमान्यता करून, कर्तव्यात कसुर केली आहे. त्यामुळे महाराष्ट्र नागरी सेवा (वर्तणुक) नियम १९७९ मधील नियम क्र.३ (२) चा भंग केला आहे.
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> ९. अतिप्रदानाबाबत लेखा शक घेतलेले असताना याबाबत दोषी असणा-या कर्मचा-यांवर वेळीच जाणुन बुजुन कार्यवाही न केल्याने दुबार नोंदी झाल्याचे आढळुन आले आहे. याबाबत हे माहिती असुनही अभिलेख्याची तपासणी वेळीच केलेली नाही. त्यामुळे रक्कम रू.६९,५१६/- चे अतिप्रदानही करण्यात आले आहे. याबाबत सुयोग्य नियंत्रण न ठेवल्याने महाराष्ट्र नागरी सेवा (वर्तणुक) नियम १९७९ मधील नियम क्र.३ चा भंग झाला आहे.
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> ११. टंचाई कामकाजात सुयोग्य नियंत्रण न ठेवल्याने रक्कम रूपये ६९,५१६/- इतक्या रक्कमेचे अतिप्रदान बसविण्यात आलेले आहे. या कारणामुळे वित्तीय अवविव्यांचा भंग झालेला असल्याने या अनियमीततेस तुम्ही जबाबदार असल्याने महाराष्ट्र नागरी सेवा (वर्तणुक) नियम १९७९ मधील नियम कं.३ चा भंग केला आहे.''

5 Before the Enquiry Officer though the department has examined 13 witnesses, the Applicant had cross examined only 2 witnesses namely P.W.1 – Kokate and P.W. Pratibha Navgire, Accountant. Learned Counsel for the Applicant during the course of hearing clarified that these 2 witnesses were only relevant for the Applicant and, therefore, he did not cross examined remaining witnesses and those were relating to other co-delinquents.

6. Insofar as charge nos.2, 3, 9 and 11 are concerned, the relevant portion from the report of Enquiry Officer is as under

"**दोषारोप क्र.२ :** महाराष्ट्र शासनाचे पाणी पुरवठा व स्वच्छता विभागाचे शासन निर्णय क्र. टंचाई/२००२/प्रमु/२९०/पापु १४ दिनांक ९/९/२००२ अन्वये पाणीपुरवठा करताना वेळापत्रकाप्रमाणे विहित प्रमाणात खेपा होतात किंवा नाही यासाठी ग्रामपातळीवर ग्रामीण पाणी पुरवठा व स्वच्छता समिती स्थापन करून त्यांचेकडे नियंत्रण ठेवण्याचे काम या समितीकडे सोपविण्यात आले आहे. त्यासाठी संबंधीत गावांसाठी /वाडीसाठी/वस्तीसाठी पाणी पुरवठा करणा-या जलवाहिन्यांची दिनांक निहाय प्रतिदिनी किती खेपा होतील, जलवाहिनी कोठे व कोणत्या वेळी रिक्त होईल याचे वेळापत्रक तयार करून प्रत्येक आठवडयाच्या सुरूवातीस संबंधीत ग्रामीण पाणी पुरवठा व स्वच्छता समितीस तहसिलदार/गटविकास अधिकारी यांना उपलब्ध करून देण्याचे विहित केलेले आहे व त्याप्रमाणे प्रत्यक्षात पाणी पुरवठा होत आहे /झालेला आहे यावर समितीच्या सदस्यांनी देखरेख ठेवुन त्यानुसार पाणी पुरवठा करण्यात आलेला आहे किंवा कसे ? याबाबतचे प्रमाणपत्र अध्यक्षांच्या स्वाक्षरीने प्रत्येक आठवडयाच्या शेवटी तहसिलदार/गटविकास अधिकारी यांचेकडे सादर करणेत यावेत असे प्रमाणपत्र मिळाल्यानंतरच जलवाहिन्यांच्या देयकांची अदायगी करण्यात यावी असे स्पष्ट आदेश आहेत. त्याप्रमाणे कार्यवाही न करताच तुम्ही तुम्हास नेमुन दिलेल्या कर्तव्यात कसूर करून जलवाहिन्यांची देयके अदा केल्याचे निष्पन्न होत आहे. तसेच खाजगी जलवाहिनी धारकांकडून त्यांचे भाडेपोटी झालेल्या एकुण रकमेतून २ टक्के सरचार्ज वजावत करणेबाबत कोणतेच तारतम्य बाळगलेले नाही त्यामुळे रक्कम रूपये १,१५,०२,१७०/-इतक्या रकमेची अनियमितता झाली त्यास अपचारी जबाबदार असल्याचे दोषारोपात नमुद करण्यात आले आहे.

यासंदर्भात स्पष्ट होते की, अपचारी यांच्या पंचायतत समिती स्तरावरुन मा. जिल्हाधिकारी यांच्याकडे जलवाहीन्यांचे प्रस्ताव पाठवितांनाच ग्रामपातळीवर पाणीपुरवठा व स्वच्छता समिती सीापन करण्यात आली होती. मंजूर जलवाहिन्याव्दारे पाणी पुरवठा (खेपा मंजुरी निहाय)करणेबाबत संबंधित खाजगी जलवाहिन्यांच्या वाहनचालकांना आदेशित करुन आदेशात पाणी टाकण्याचे ठिकाणाचे गाव/वाडीचे नावासह इ.बाबी नमुद करुन आदेश देण्यात आले आहे. त्याची प्रत संबंधित ग्रामपंचायतीच्या ग्रामसेवकांकडे पाठविली आहे. जलवाहिनींच्या खेपा ठरवुन दिलेल्या वेळापत्रकानुसार होतात किंवा नाही याबाबत संबंधित गावाच्या पाणी पुरवठा स्वच्छता समितीच्या २ महिला सदस्यांनी तसेच संबंधित ग्रामसेवकांनी लॉग बुकवर सहया केल्या आहेत. त्या पृष्ठर्थ काही जलवाहिनी लॉगबुकाच्या छायांकित प्रती नमुनेदाखल सादर केल्या आहेत. पंचायत समिती अहमदनगर कडील ट्रक वाहतूक संस्था यांना अहमदनगर तालुक्यातील मंजूर पाणी टंचाईग्रस्त गांवाना खाजगी जलवाहिन्यांनी पिण्याचे पाणी पुरवठा केल्या पोटी इंधनाची देयके संबंधीत ठेकेदारासंस्थेस अदा केली नसल्याचे अपचारी यांनी चौकशीत निदर्शनास आणून दिलेले आहे. सदर देयके अदा केल्याचे पुरावे सादरकर्ता अधिकारी यांनी चौकशीत सादर केलेली नाहीत अथवा जोडप; ४ मध्येही ती देयके जोडलेली नाहीत. याबाबत साक्षीदारांच्या साक्षीतुनही देयके अदा केल्याचे स्पष्ट झालेले नाही त्यामुळे दोषारोपात नमुद २ टक्के सरचार्ज कपात करण्याचा प्रश्न उद्भत नाही. त्यामुळे याबाबत अपचारी दोषी असल्याचे स्पष्ट होत नाही.

दोषारोपात अपचारी यांचेकडील खाजगी जलवाहीन्यांपैकी कोणत्या जलवाहीनीने कोणत्या गावास पाणीपुरवठा केला नाही वा कमी खेपा टाकल्या याबाबत कोणतेही विशिष्ट उदाहरण दोषारापोत नमुद केलेले नाही वा त्याबाबत सादरकर्ता अधिकारी यांनीही यासंदर्भात पुरावे देवुन काहीही स्पष्ट केलेले नाही. तथापि दोषारोपात नमुद केल्याप्रमाणे अपचारी यांनी पाणीपुरवठा केली आहे वा असे याबाबतचे प्रमाणपत्र पाणी पुरवठा समितीच्या अध्यक्षाच्या स्वाक्षरीने प्रत्येक आठवडयाच्या शेवटी घेतल्याचे दिसुन येत नाही. तेव्हा याबाबत अपचारी हे दोषी असल्याचे दिसते. वरील विवेचन पाहता मी सदर दोषारोपा बाबत सादरकर्ता अधिकारी तसेच अपचारी यांचे म्हणण्याशी मी पुर्णतरु सहमत नाही. सबब दोषारोप अंशत: सिध्द होतो.

दोषारोप क्र.३ : मा. विभागीय आयुक्त नाशिक यांचेकडील टंचाई संदर्भात जलवाहिन्याव्दारा / बैलगाडीव्दारे पाणी पुरवठा काटेकोरपणे अंमलबजावणी करणे बाबतचे सुचना परिपत्रक क्र.मशा/कार्या-२/३/टंचाई/८७८,दिनांक १८/१२/२००० परिच्छेद क्र.५ अ ते फ पर्यंतच्या तसेच सदर परिपत्रकाचे परि. ५ नुसार गट विकास अधिकारी/तहसिलदार यांनी टूंकर बैलगाडी व्दारे पाणी पुरवठा होत असलेल्या गावांना सातत्याने भेटी देऊन पाणी पुरवठा नियमित केला जाते किंवा नाही चालु असल्याची तसेच ट्रक मालकांकडून अनियमितता होत नाही याची खात्री करावी या सुचनांकडे अपचारी यांनी सहेतुक दुर्लक्ष केल्याचे स्पष्ट होत आहे. त्याचप्रमाणे मी आयुक्त यांची जलवाहिनीव्दारे पाणी पुरवठा काटेकोरपणे अंमलबजावणी करणे बाबतचे पत्र क्र.मशा/कार्या-२/३/टंचाई/४५०/२००१ दि.१८/४/०१ अन्वये गावातील सुशिक्षीत महिलांची समिती सीापन करुन विहित खेपा केल्या बाबतच्या स्वाक्ष-या सर्व पाणी पुरवठा करण्यात येणा-या गावांच्या बाबतीत घेण्यात आलेल्या नाहीत याबाबत वरिष्ठाच्या आदेशाची अवमान्यता करुन कर्तव्यात कसूर केली असल्याचे दोषारोपात नमुद करण्यांत आले आहे.

याबाबत स्पष्ट होते की, अपचारी यांनी प्रत्येक गावात अशी समिती सीापन करण्यांत आलेली होती त्यापृष्ठयर्थ अपचारी यांनी पुरावेदाखल जलवाहिनी लॉगबुकाच्या छांयाकित प्रती नमुने दाखल सादर केल्या आहेत. चौकशीत असे

निदर्शनास आले की, सदर महिला समितीची नांवे प्रस्ताव समवेत सादर केल्याशिवाय मा. जिल्हाधिकारी यांचेस्तरावरुन प्रस्तावास मंजूरी मिळत नव्हती, ज्या अर्थी सदरील प्रस्तावास मंजूरी देण्यांत आलेली आहे, त्या अर्थी अशा सीापन करण्यांत आलेल्या महिला समितीच्या सदस्यांची नांवे प्रस्तावासोबत सादर करण्यांत येत होती हे स्पष्ट होते. तसेच पाणी पाणी पुरवठयांच्या खेपा ग्रामसेवकांनी सहया घेतलेल्या असल्याचे स्पष्ट होते. परंतू पाणी पुरवठा सुरळीत होत असल्याबाबत अपचारी यांनी खात्री केल्याचा पूरावा चौकशी समोर सादर केलला नाही. तेव्हा याबाबत अपचारी यांनी कसूर केल्याचे दिसून येते. सदर विवेचन पाहता सादरकर्ता अधिकारी तसेच अपचारी यांच्या म्हणण्याशी मी पुर्ण:त सहमत नाही. सबब दोषारोप अंशत: सिध्द होतो.

दोषारोप क्र.९ :- गट विकास अधिकारी पंचायत समिती नगर यांनी पंचायत समिती अहमदनगरचे सन २००४-०५ मध्ये झालेल्या लेखा परिक्षणात परिच्छेद क्र.३१ मध्ये पिण्याचे पाणी पूरवठा भरणेसाठी खाजगी जलवाहिन्या भाडयाने लावण्यामध्ये देयकांची दुबार प्रदान व जादा प्रदान बाबतची नोंद घेण्यात आलेली आहे. त्यामध्ये टॅंकरचा कि.मी. मध्ये वाढ केलेली असून इंधन व भाडे यामध्ये झालेल्या दुबार प्रदान व जादा प्रदानाची परिगणना आहे. अशी रक्कम रु. ८२,४०५/- असुन सदरची रक्कम दि.२४/५/२००६ रोजी चलनाव्दारे बॅंकेत भरणा केला आहे. तथापि सदर बाबत संबंधीत सहायक लेखाधिकारी, कनिष्ठ सहायक, व मिस्त्री वर्ग - २ यांचे वर गट विकास अधिकारी यांनी जाणून बुजुन काहीही सहेतुक कार्यवाही न केल्यामुळे अथवा कर्मचा-याना दुबार नोंदी व जादा रक्कम अदा करण्यास चालना दिली वा प्रवृत्त केले आहे. त्यामुळे रक्कम रुपये ७५,२३२/- दुबार नोंद झाली आहे. व रु.६९,५१६/- चे अतिप्रदान ही करण्यात आले आहे. गट विकास अधिकारी व संबंधीत कर्मचारी यांना माहिती असून सुध्दा अभिलेख्यांची तपासणी केली नाही. सदर बाबत सुयोग्य नियंत्रण ठेवलेले नसल्याबाबत दोषरोपात नमुद केले आहे.

या संदर्भात स्पष्ट होते की, दोषारोपात नमुद खाजगी जलवाहीन्या भाडयाने लावण्यामध्ये देयकाचे दुबार प्रदान करण्यासंदर्भात अपचारी यांनी कनिष्ठ सहायक यांचा खुलासा घेतलेला असुन संबंधीत कनिष्ठ सहायकास असे पुन्हा न घडणे बाबत ताकीद दिलेली आहे. दोषारोपात नमुद बाबी बाबत अपचारी यांनी निदर्शनास आणुन दिल्यानुसार डिझेल साठा नोंदवही पान क्र.५२ वर रु.७५,४८४/- इतक्या रकमेचे दुबार देयक नोंदविल्याचे नमुद केले आहे. तथापि हे पेमेंट दोन वेळा झालेली नाही. फक्त डिझेल साठा नोंदवहीत सदर बीलांच्या दोनदा नोंदी घेण्यात आलेल्या असलयाचे सदरचे पेमेंट दोनदा झाल्याचे दिसून येते. उपलब्ध अनुदानाच्या प्रमाणात इंधनाचे शेवटचे बील, बीलाच्या रक्कमेपेक्षा कमी रक्कमेला पास केले असल्याने दुबार पेमेंट रक्कम रु.७५,४८४/- ऐवजी रु.७१,९६५/- इतकी येत असल्याचे श्रीमती नगरकर कनिष्ठ सहायक यांनी दि. ९/३/२००० रोजी दिलेल्या खुलाश्यात नमुद केले असल्याचे पुरावे कागदपत्रावरुन दिसुन येते. दोषारोपात नमुद रु. ६९,५१६/- इतकी रक्कम अतिप्रदान केल्या संदर्भात अपचारी यांनी त्यांचे निवेदनात कोणतेही समर्थनिय खंडण केल्याचे दिसुन येत नाही. तेव्हा अपचारी यांनी रु.६९,५१६/- रक्कमेचे अतिप्रदान केल्याचे स्पष्ट होत आहे.

वर नमुद केल्याप्रमाणे अपचारी यांनी कनिष्ठ सहायक यांच्या खुलासा घेऊन त्यांना ताकीद दिली आहे. तथापि संबंधीत सहायक लेखाधिकारी तसेच मिस्त्री वर्ग -२ यांचेवर अपचारी यांनी कारवाई केल्याचे दिसुन येत नाही. याबाबत अपचारी यांनी वेळीच अभिलेख्यांची तपासणी केली असती तर अशी बाब घडली नसती तेव्हा या बाबत अपचारी यांनी कसुर केल्याच` दिसुन येते. तेव्हा वरील विवेचन पाहता अपचारी दोषी असल्याचे स्पष्ट होते. करीता सादरकर्ता अधिकारी यांचे म्हणण्याशी मी सहमत आहे. सबब सदर दोषारोप सिध्द होतो.

दोषारोप क्र.११ : मे.दिपक फयुअस एजन्सीला शासकीय व खाजगी जलवाहिन्यांना पुरविण्यात आलेल्या इंधनाच्या अदायगी पोटी रक्कम रु.६९,५१६/- इतके अतिप्रदान झालेले आहे. याबाबत अपचारी यांनी सुयोग्य नियंत्रण न ठेवल्यामुळे सदर अतिप्रदान झाले यास अपचारी हे जबाबदार असल्याचे दोषारोप नमुद केलेले आहे.

यासंदर्भात स्पष्ट होते की, साक्षीदारांच्या साक्षीतुन सदर दोषारोपास पृष्ठी मिळालेली नाही. तथापि याबाबत अपचारी यांनी त्यांचे निवेदनात दोषारोपाचे खंडनार्थ कोणतेही पुरावे सादर केलेले नाहीत. उपलब्ध कागदपत्रावरुन दोषारोपात नमुद केल्याप्रमाणे इंधनाच्या अदायगी पोटी रक्कम रु.६९,५१६/-इतके अतिप्रदान झाल्याचे स्पष्ट होत असुन याबाबत अपचारी यांनी सुयोग्य नियंत्रण न ठेवल्यामुळे सदरचे अतिप्रदान झाले आहे असे स्पष्ट होते. तेव्हा याबाबतीत अपचारी हे दोषी असल्याचे दिसून येते, करीता अपचारी यांचे म्हणण्याशी मी सहमत नाही. सबब दोषारोप सिध्द होतो.''

7. On receipt of enquiry report, the show cause notice was given to the Applicant to which he submitted reply denying the charges. However, the Government by order dated 20.01.2018 imposed punishment which is challenged in the present O.A.

8. 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 reappreciate 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. 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 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."

9. Bearing in mind the aforesaid legal principles, now the question posed for consideration is whether the punishment imposed upon the Applicant needs interference by the Tribunal, on the grounds urge by learned Counsel for the Applicant.

10. Shri A. V. Bandiwadekar, learned Counsel for the Applicant sought to assail the impugned order of punishment *inter-alia* contending that since the punishment is imposed after retirement of the Applicant, there has to be specific finding that delinquent has committed grave misconduct or negligence during the period of his service by the disciplinary authority as contemplated under Rule 27(1) of "Pension Rules, 1982' and in present case, there being no such specific finding or observations by the disciplinary authority in impugned order dated 20.01.2018, the punishment is unsustainable in law. In this behalf, he referred to the decision of the Hon'ble Supreme Court in ***1995 Supp (1) SCC 321 High Court of Punjab & Haryana V/s Amrik Singh and (1990) 4 SCC 314 D.V. Kapoor V/s Union of India and others and in (2015) 12 SCC 408 H.L. Gulati V/s Union of India & Ors.***

11. Here it would be apposite to refer the Ruel 27 (1) of "Pension Rules, 1982' which is as under :-

*"**Rule 27 : Right of Government to withhold or withdraw pension –** (1) (Appointing authority may), by order in writing, withhold or withdraw a pension or any part of it, whether permanently or for a specified period, and also under the recovery from such pension, the whole or part of any pecuniary loss caused to Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement :*

Provided that the Maharashtra Public Service Commission shall be consulted before any final orders are passed in respect of officers holding posts within their purview :

Provided further that where a part of pension is withheld or withdrawn, the amount of remaining pension shall not be reduced below the minimum fixed by Government."

12. In ***Amrik Singh's*** case, the Hon'ble Supreme Court had considered Rule 2.2, Clause (b) of "Punjab & Haryana Pension Rules, 1972" which is identical to 'Pension Rules, 1982.' In that case, the Superintendent working in High Court of Punjab & Haryana had attained superannuation on 31.08.1980 but he was given extension of two years and was to retire after the period of reemployment on 31.08.1982. During the period of employment, he found to have committed misappropriation of fund, and therefore, D.E. was initiated. In the meantime, on expiry of period of two years' reemployment period, he was allowed to retire. After conducting enquiry and on receipt of report, the Hon'ble High Court on administrative side dismissed him by order dated 07.06.1983 with immediate effect. He challenged the punishment by filing W.P. on judicial side. The Hon'ble High Court set aside the order of dismissal with liberty to disciplinary authority to take appropriate action under the 'Pension Rules'. In dismissal order, it was stated that dismissal would come into immediate effect from the date of order. Indeed, he had already retired on 31.08.1982 after expiration of reemployment period. The Hon'ble Supreme Court, therefore, held that the order of giving effect to the order of dismissal from the date of its order was of no consequence and became superfluous as he was no longer in service as on that date. Accordingly, liberty was given to take further action in terms of 'Pension Rules', which empowers Government

to withhold or withdraw pension as it deems fit where pensioner is found guilty of grave misconduct or negligence.

13. Whereas in ***D. V. Kapoor's*** case, the delinquent was an Assistant in Indian Foreign Services and was charged of being guilty of willful misconduct in not reporting his duty on his transfer from Indian High Commission at London to the office of External Affairs Ministry, Government of India, New Delhi. The Enquiry Officer found him guilty in dereliction in duty with rider that it was not willful since he could not move to New Delhi due to his wife's illness and recommended sympathetic consideration. However, the President accepted his finding and passed an order to withhold gratuity. However, the Hon'ble Supreme Court held that no provision of law authorized the President to withhold gratuity as a measure of punishment and secondly there was no finding that the Appellant did commit grave misconduct. Therefore, the order passed by the President was found illegal and in excess of jurisdiction. Thus, in that case, there was no such grave misconduct and secondly, the Rule does not permit to withhold gratuity. Whereas in present case, Rule 27 of 'Pension Rules, 1982' empowers Government to withhold pension where grave misconduct or negligence is established.

14. Insofar as ***H.L. Gulati's*** case is concerned, the Hon'ble Supreme Court only modified the punishment even if there was no such conclusion of disciplinary authority that the Delinquent had committed grave misconduct.

15. Now turning to the facts of the present case, in impugned order dated 20.01.2018, there is no such specific finding that misconduct or negligence of Appellant was grave. However, the Applicant is found guilty while making payment of diesel bill to M/s Deepak Fuel Agency. He made excess payment and thereby caused monetary loss to the Government. As such, the Tribunal is required to see whether the delinquency attributed to Government amounts to grave misconduct or negligence and where material placed on record establishes the commission of grave misconduct or negligence, in that event,

punishment will have to be upheld. A Government servant who committed such grave negligence cannot be allowed to go scot-free. Therefore, in my considered opinion failure of the concerned authority to record specific conclusion that misconduct or negligence was grave that ipso-facto could not render punishment order illegal.

16. As stated above, this Tribunal cannot reappreciate the evidence as a court of appeal. The jurisdiction of the Tribunal is limited. It is well settled that Tribunal/Court cannot interfere with the findings of fact recorded in D.E. except in circumstances where such findings are patently perverse or based on no evidence or where principles of natural justice have been violated. In present case, full and fair opportunity was given to the Applicant to defend himself. Admittedly, he was Block Development Officer and it was his responsibility to ensure the correctness of the bills of fuel before approving the same. However, admittedly, he made access payment of Rs.69,516/- to M/s Deepak Fuel Agency without ascertaining its correctness. In this behalf, as regard Charge Nos.9 and 11, it would be material to see final defence statement of the Applicant in which he stated as under :-

" दोषारोप बाब क्र.९ - अति प्रदानाबाबत लेखी शक घेतलेले असताना याबाबत दोषी कर्मचा-यांवर कार्यवाही झालेली नाही ही वस्तुस्थिती आहे. कारण याबाबतची जबाबदारी लेखा शाखेची होती. गटविकास अधिकारी या नात्याने मी संबंधितांचा खुलासा घेतलेला असून असे पुन्हा घडता कामा नये अशी सक्त ताकीद दिली आहे. सदर रक्कम संबंधीतांकडून वसुल केलेली असल्याने शिक्षा केलेली नाही. याबाबतीत मी कोणालाही पाठीशी घातलेले नाही. त्यामुळे सुयोग्य नियंत्रण ठेवलेले नाही व माहीत असूनही अभिलेखांची तपासणी केली नाही हा दोषारोप चुकीचा आहे.

दोषारोप क्र.११ - मे.दिपक फयुएल एजन्सीज शासकीय व खाजगी जलवाहिन्यांना पुरविण्यात आलेल्या अदायगीपोटी रक्कम रू.६९९१६/- एवढे प्रति प्रदान झाले असा दोषारोपात उल्लेख आहे. हा दोषारोप चुकीचा आहे कारण याबाबत संबंधीत कर्मचा-यांनी बिले सादर करताना दक्षता घेतलेली नाही. तसेच लेखा शाखेमार्फत या बीलांचे योग्य प्रकारे लेखापरिक्षण केलेले नाही. ही वस्तुस्थिती लक्षात घेतल्यास अतिप्रदानास मी जबाबदार आहे हे म्हणणे चुकीचे आहे. त्यामुळे मी महाराष्ट्र नागरी सेवा (वर्तणूक) नियम १९७९ मधील नियम ३ चा भंग केलेला नाही. त्यामुळे हा दोषारोप सिध्द होत नाही.''

17. As regard charge no.2, he stated as under :

"अदयाप नगर तालुक्यातील जलवाहिन्यांची (शासकीय व खाजगी) लॉगबुकानुसार बीले अदा केलेली नाहीत. वाहन चालकांनी घेतलेले इंधन हे केवळ अग्रीम स्वरूपात असल्यामुळे व त्याबद्दलची खात्री पाणी पुरवठा विभाग जिल्हा परिषद यांनी केल्यामुळे व संबंधीत विभाग व लेखा विभागाने आक्षेप न नोंदविता बीले सादर केल्यामुळे मी त्या बिलावर स्वाक्षरी करून बिले अदा केलेली आहेत.''

18. It is thus explicit that though the Applicant was bound to verify and confirm the correctness of the payment, he did not verify the same and negligently made payment. This is nothing short of grave negligence while performing duties which resulted into excess payment to M/s.Deepak Fuel Agency whereby monetary loss has been caused to the Government exchequer. Apart notably, this aspect is also specifically dealt with by appellate authority. The Appellate authority in its order dated 15.11.2018 recorded its conclusion as under :-

" ग्रामविकास विभागाचे अभिप्राय - श्री.ढमाले यांच्याविरुध्द एकूण १३ दोषारोपांपैकी २ दोषारोप अंशत: सिध्द होत आहेत व २ दोषारोप सिध्द होत आहेत तर उर्वरित दोषारोप सिध्द होत नाहीत असे चौकशी अधिकारी यांचे निष्कर्ष आहेत. दोषारोप क्र.२ बाबत ग्रामीण पाणीपुरवठा व स्वच्छता समितीच्या अध्यक्षांच्या स्वाक्षरीचे प्रमाणपत्र प्राप्त न करताच जलवाहिन्यांच्या देयकांची अदायगी करण्यात आल्याचे दिसून येते. दोषारोप क्र.३ संदर्भात श्री.ढमाले यांनी पाणीपुरवठा सुरळीत होत असल्याबाबत संबंधित गावांना भेटी देऊन खात्री केल्याचे दिसून येत नाही. दोषारोप बाब क्र.११ मध्ये मे.दिपक फयुअल एजन्सीला जलवाहिन्यांना पुरविण्यात आलेल्या इंधनाच्या अदायगीपोटी रक्कम रू.६९,५१६/- इतके अतिप्रदान झालेले आहे. याबाबत अपचारी यांनी सुयोग्य नियंत्रण न ठेवल्याने सदरचे अतिप्रदान झाल्याचे स्पष्ट होते. सदर अतिप्रदानाच्या रक्कमेपैकी(रू.६९,५१६/-) १/३ इतकी रक्कम म्हणजेच रू.२३१७२/- श्री.ढमाले यांच्या सेवा उपदानातून एकरकमी वसुल करण्यात यावी अशी शिक्षा देण्यात आली आहे. उर्वरित १/३ रक्कम ही श्री.खर्से, सहाय्यक लेखाधिकारी यांचेकडून व १/३ रक्कम श्रीमती नगरकर, कनिष्ठ सहाय्यक यांचेकडून वसुल करण्याबाबत त्यांना शिक्षा देण्यात आली आहे. त्यामुळे अतिप्रदानाची रक्कम एकटया श्री.ढमाले यांचेकडूनच वसुली केली अशी बाब नाही. एकंदरीत या प्रकरणात चौकशी अधिका-यांचे निष्कर्ष फेटाळण्यासाठी कोणतेही कारण दिसून येत नाही. त्यामुळे श्री.ढमाले यांना शासनाने दोषसिध्दीच्या अनुषंगाने योग्य रित्या शिक्षा बजावली आहे.

सुनावणीअंती निष्कर्ष - अपीलार्थी यांनी मा.राज्यपाल महोदयांकडे दाखल केलेले अपील दि.१२/९/२०१८ रोजी सुनावणीदरम्यान झालेली चर्चा तसेच अपीलार्थींनी दिलेले निवेदन, प्रकरणी प्राप्त विभागीय चौकशीचा अहवाल, या प्रकरणातील अन्य कागदपत्रे तसेच याबाबतची विभागाकडील नस्ती यांचे अवलोकन केल्यानंतर मी खालील निष्कर्षाप्रत आलो आहे:-

अ) अपिलार्थी यांनी विलंबाबाबत नमूद केलेली कारणीमिमांसा विचारात घेवून या प्रकरणी अपिलार्थींना अपिल दाखल करण्यास झालेला विलंब क्षमापित करण्यात येत आहे.

ब) दोषारोप क्र.२ अन्वये ग्राम पाणीपुरवठा व स्वच्छता समितीच्या अध्यक्षांच्या स्वाक्षरीने प्रत्येक आठवडयाच्या शेवटी प्रमाणपत्र मिळाल्यानंतरच टँकरच्या बिलाची अदायगी करणे आवश्यक होते. याबाबत अपिलार्थी यांनी अपिलामध्ये सादर केलेल्या लेखी खुलाशामध्ये समजा पाणीपुरवठा समितीच्या अध्यक्षांच्या स्वाक्षरीने प्रमाणपत्र सादर झाली नसली तरीही या प्रकरणी शासनाने नुकसान झाल्याचे बाब सिदध झाली नाही व या प्रकरणी कार्यालयीन पध्दतीचे पालन झाले नसून कार्यालयीन अनियमितता झाल्याचे बाब मान्य केली आहे. सुनावणी दरम्यान अथवा अपिलामध्ये सदर दोषारोप अमान्य करण्यापृष्ठयर्थ अपिलकर्त्यांनी कोणतीही ठोस कागदपत्रे अथवा पुरावे सादर केलेले नाहीत.

क) दोषारोप क्र.३ अन्वये पाणी पुरवठा होत असलेल्या गावांना सातत्याने भेटी देवून पाणी पूरवठा नियीमत केला जातो किंवा नाही याची स्थानिक चौकशी करून याबाबत अनियमितता होत नाही याची खात्री करणे आवश्यक होते. याबाबत अपिलार्थी यांनी अपिलामध्ये सादर केलेल्या लेखी खुलाशामध्ये कोणत्याही गावातून पाणी पूरवठा होत नसल्याचे तक्रार आलेली नसल्याने पाणी पुरवठा सुरळित होत होता, असा निष्कर्ष काढला आहे. मात्र या दोषारोपाच्या अनुषंगाने अपिलार्थी यांनी विभागीय आयुक्त, नाशिक यांच्या निर्देशानुसार टंचाईग्रस्त गावांना भेटी दिल्या होत्या किंवा कसे याबाबतची कोणतीही माहिती अपिलामध्ये अथवा सुनावणी दरम्यान सादर केलेली नाही.

ड) दोषारोप क्र.९ व ११ हा पुरवठादारास रू६९,५१६/- इतकी रक्कम अतिप्रदान झाल्यासंदर्भातील असून याबाबत अपिलार्थी यांनी अपिलामध्ये सादर केलेल्या लेखी खुलाशामध्ये देयकाचा ताळमेळ घेणे हे संबंधीत सहाय्यक लेखाधिकारी यांना शक्य झाले नसावे, तथापी ही लिपीकीय स्वरूपाची चूक असून संबंधित पुरवठादार यांनी सदर रक्कम वसूल करून घेण्यास सहमती दर्शवली असल्याचे नमूद करुन कामाची प्रचंड संख्या विचारात घेता अशा बाबी घडू शकतात, असे नमूद केले आहे. यावरून पूरवठादारास रू.६९५१६/-इतक्या रकमेचे अतिप्रदान झाले आहे, ही बाब अपिलार्थींना मान्य आहे. अपिलार्थींना या प्रकरणी टंचाई कामकाजात सुयोग्य नियंत्रण ठेवले असते तर अतिप्रदानाची ही बाब टाळता येऊ शकली असती.''

19. Thus, the Applicant was holding the post of Block Development Officer (Administrative Head of Panchayat Samiti) and admittedly passed the bills of fuel but he tried to pass buck to Accountant stating that it was responsibility of Account Branch. Needless to mention that the Applicant being Head of the office, it was his responsibility to ensure correctness of payment and he cannot pass buck to Account Section. Indeed, in the said inquiry, two employees from account section namely Kharse, Assistant Accountant and Smt. Nagarkar, Junior Assistant where also held jointly responsible along with Applicant for excess payment of Rs.69,516/- to M/s Deepak Fuel Agency and therefore 1/3rd liability has been apportioned and accordingly Rs.23,172/- were sought to be recovered from the Applicant.

20. The submission advanced by learned Counsel for the Applicant that there has to be approval of the Government initially first for initiation of department proceeding and again second approval for the draft charges and in absence of two stages approval initiation of D.E is illegal holds no water. His submission to that effect in reference to Rule 8 (4) of Maharashtra Civil Services (Discipline & Appeal) Rules 1979 is misplaced. Rule 8(3) and (4) of Rules ,1979 are relevant which are as under :-

"8. Procedure for imposing major penalties

(3) Where it is proposed to hold an inquiry against a Government servant under this rule, the disciplinary authority shall draw up or cause to be drawn up-

(i) the substance of the imputations of misconduct or misbehavior into definite and distinct articles of charge;

(ii) a statement of the imputation of misconduct or misbehavior in support of each article of chare, which shall contain-

(a) a statement of all relevant facts including any admission or confession made by the Government servant; and

(b) a list of documents by which, and a list of witnesses by whom, the article of charges are proposed to be sustained.

(4) The disciplinary authority shall deliver or cause to be delivered to the Government servant, a copy of articles of charge, the statement of the imputations of misconduct or misbehavior, and a list of documents and of the witnesses by which each article of charge is proposed to be sustained, and shall by a written notice require the Government servant to submit to it within such time as may be specified in the notice, a written statement of his defence and to state whether he desires to be heard in person."

21. The perusal of Rule 8 makes it quite clear that where D.E. is proposed against the Government servant, the disciplinary authority shall draw up or caused to be drawn up the substance of imputation of misconduct or negligence caused to be delivered to Government servant. Rule 8 does not say that there has to be 1st approval for initiation of D.E. for disciplinary authority and then again 2nd approval for the charges drawn up by the disciplinary authority. The requirement is restricted to approval of charges drawn up by the disciplinary authority. In present case, perusal of file noting (page 91 to 93) reveals that there is approval of Hon'ble Minister to the charges drawn against the applicant.

22. The reliance placed by learned Counsel for the Applicant on ***2019 (1)SLR 41 (S.C.) (State of Tamil Nadu Vs Promod Kumar and Anr.)*** is misplaced. In that case, the Hon'ble Supreme Court was dealing with All India Services (Discipline & Appeal), Rules 1969. As per Rule 8 of the said rules, where it is proposed to hold an enquiry against a member of the service, the disciplinary authority shall 'drawn up or cause to be drawn up', the substance imputation of misconduct or negligence into definite and distinct article of charges. This provision is in paramateria with Rule 8(3) of 'D & A Rules of 1979'.

23. In ***Pramod Kumar's*** case, approval of disciplinary authority was taken for initiation of disciplinary proceedings only and there was no approval from the disciplinary authority at the time when Charge Memo was issued to the delinquent officer. As such, there was no approval of the disciplinary authority to the charges drawn up against a Government servant. Therefore, in fact situation, the Hon'ble Supreme Court held that if any authority other than disciplinary authority is permitted to draw the Charge Memo, the same would result in destroying the underlying protection guaranteed under Article 311 (2) of Constitution of India.

24. Whereas in present case, admittedly there is approval of the disciplinary authority to the charges drawn up, I, therefore, see no irregularity or illegality in issuance of charge sheet. There is composite approval for initiation of D.E. as well as to the charges drawn up against the delinquent.

25. Shri A. V. Bandiwadekar, learned Counsel for the Applicant further sought to assail punishment order on the ground of non-compliance of non-examination of Applicant at the end of inquiry by Enquiry Officer as contemplated under Rule 8(20) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. However, he was not able to establish what kind of prejudice is caused to the Applicant for not examining the Applicant as contemplated under Rule 8(20) of 'Rules 1979'. Unless prejudice is demonstrated and shown to have been

caused non examination of delinquent cannot be said fatal. 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)."*

26. At this juncture, it would be also apposite to note the Judgment of Hon'ble Apex Court in ***1993(4) SCC 727 [Managing Director, ECIL Vs. B. Karunakar]*** held as under :-

> *"The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of denial to him of the report, has to be considered on facts and circumstances of each case. Where therefore, even after furnish of the inquiry report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and get all consequential benefits. This would amount to rewarding dishonest and the guilty and thus to stretching the concept of the natural justice to illogical and exasperating limits. This amounts to an unnatural expansion of natural justice which in itself antithetical to justice."*

27. 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 ***Sunil Kumar Banarjee's*** case (cited supra), the contention of prejudice for non-examination of delinquent was turned down and order of punishment was maintained. In present case, full and fair opportunity was given to the Applicant and all that he tried to pass buck to Accountant though it was he who passed bills whereby excess payment was made to Supplier. This being the position, in my considered opinion, no prejudice is caused to the Applicant because of his non-examination under Rule 8(20) of 'D & A Rules of 1979'.

28. In this view of the matter, in my considered opinion, no case is made out to interfere in the impugned order. The grave negligence on the part of Applicant while making payment of fuel is clearly spelt out from the material on record. Indeed, there is clear admission on the part of Applicant as referred to above that it is he who made payment but tried to pass buck to Account Section. It was his responsibility to ensure the correctness of the bills before accepting the same for payment but he did not observe necessary precaution and passed bills which resulted in excess payment of Government money. Had he exercised due diligence and confirmed correctness of amount, such instance of loss to Government would not have occurred. The Applicant is thus clearly guilty of negligence which caused pecuniary loss to Government exchequer and it will have to be termed as grave negligence as contemplated under rule 27 of Maharashtra Civil Services (Pension) Rules 1979.

29. The reliance placed on the decision of the Hon'ble High Court in ***2021 (2) Mh.L.J. 703 (Umesh E. Agalawe Vs. Bharat Heavy Electricals Ltd.)*** is totally misplaced. In that case, there was allegations of demand of bribe from one Shri Vishal Shah to accept his tender. The criminal prosecution was pending and simultaneously the D.E. was

initiated and the Applicant was held guilty. In that inquiry, only one witness viz. Shri Nair was examined who deposed about the procedure of tendering only. He did not tell any incriminatory thing against the Applicant. The complainant Vishal Shah was also not examined. It is only on the basis of forensic report about the conversation of the delinquent and complainant, the Applicant was held guilty in D.E. Therefore, in fact and circumstances, the Hon'ble High Court held that genesis of D.E. itself was not established and there was no evidence. Thus, it was a case of no evidence since the forensic report was not proved by examining the concerned witnesses. Whereas in present case, it is not so and admittedly the Applicant himself passed the bills whereby the excess payment was made. Needless to mention, strict rules of Evidence Act do not apply to domestic inquiry and guilt can be established on preponderance of probabilities. That apart in present case, it is because of grave negligence of the Applicant, the excess payment was made. The Applicant did not dispute that payment was made under his signature and authority. Suffice to say, the decision relied by the learned Counsel for the Applicant is of no assistance to him in the facts and circumstances of the present case.

30. In view of above, challenge to impugned order of punishment holds no water and O.A. No.928/2019 is liable to be dismissed.

31. Now turning to the facts of O.A. No.937/2019, which is against the order dated 29.06.2018 whereby suspension of the Applicant from 17.03.2007 to 31.05.2011 has been held suspension 'As such' in exercise of Rule 72(1) of Maharashtra Civil Services (Joining time, Foreign Service and Payment during Suspension, Dismissed and Removal) Rules, 1981. Before passing the order, the show cause notice was issued to Applicant and on consideration of his representation, the Government passed impugned order stating that in view of his punishment of deduction of 6% pension for 1 year and recovery of

Rs.23,174/- from Gratuity, the period from 17.05.2007 to 31.05.2011 treated the suspension 'As such'.

32. Insofar as challenge to order dated 29.06.2018 is concerned, learned Counsel for the Applicant sought to assail it inter-alia contending that D.E. has been prolonged unduly without there being any fault on the part of Applicant. According to him, had the Government completed D.E. within reasonable period, the suspension period would not have that much long and Applicant would not have suffered such huge monetary loss of longer suspension period. He has further pointed out that in terms of various circulars issued by the Government the D.E. ought to have been completed within 1 year but it is concluded after 9 years and it has caused serious monetary loss to the Applicant. He has further pointed out that the Divisional Commissioner who suspended the Applicant, by his communication dated 29.08.2009 forwarded the proposal to the Government for reinstatement of the Applicant stating that he had already undergone 2 years suspension but it was completely ignored. He, therefore, submits that at least from 29.08.2009, the Applicant ought to have been reinstated in service to minimize monetary loss. He, therefore, made a fervent plea that considering the minor punishment now imposed of 6% deduction of pension for 1 year and recovery of Rs.23,172/- from Gratuity, it would be very unjust, arbitrary and oppressive to treat the suspension period 'As such' which amounts to more punishment than the punishment inflicted by the disciplinary authority.

33. Per Contra, Smt.Archana B. K., learned Presenting Officer sought to defend the impugned order inter-alia contending that Applicant was found guilty in D.E., the suspension will have to be held justified and it is rightly treated suspension 'As such' by the Government.

34. The Applicant was suspended on 17.03.2007. The D.E. was initiated on 04.08.2009. During the pendency of D.E. he stands retired on 31.05.2011. The Enquiry Officer submitted report on 31.12.2016. However, the disciplinary authority imposed punishment on 20.01.2018. Thus, there was huge and inordinate delay in completion of D.E. which is not explained by the Respondents. The alleged misconduct pertains to 2005 to 2007.

35. Indeed, the Government had issued various Circular and G.R. from time to time for expeditious conclusion of D.E. In this behalf, the Government by circular dated 07.04.2008 issued specific instructions for expeditious conclusion of D.E. giving specific time limit for the same. In reference to departmental proceeding manual, 1991, it is reiterated in Circular that D.E. needs to be completed within 6 months from its initiation but for some reasons, it is not possible to complete D.E. within 6 months and it took more than 9 months, the specific orders of extension are required to be sought from the competent authority. It further provides that where it took more than 5 years the responsibility needs to be fixed upon the concerned for delaying departmental proceedings who would be subjected to disciplinary action for such inordinate delay. Whereas in present case, there is absolutely nothing on record about extension sought for completion of D.E. Suffice to say, undue and inordinate delay in completion of D.E. is clearly spelt out. Had the D.E. completed within reasonable time, the Applicant would not have suffered so much monetary loss to which he is subjected to.

36. It would not be out of place to mention here one more aspect of the direction issued by the office of Lokayukta to the Government for completion of D.E. within a year so that retirement benefits are not delayed. The office of Lokayukta in its 23rd Annual Report observed that pensioners are subjected to much hardship because of inordinate delay in completion of departmental enquiries which should be completed maximum within one year. The Government accepted the

recommendation and issued Circular on 24.02.1997 and issued specific instructions that D.E. of retired Government servant has to be given priority and it should be completed within one year.

37. However, the Respondents completely ignored the Circular dated 24.02.1997 as well as Circular dated 07.04.2008 and continued D.E. for years together. Suffice to say, there is huge and inordinate unexplained delay in completing D.E. This aspect needs to be borne in mind since it caused serious monetary loss to the Applicant as he was to remain in suspension for longer time.

38. As earlier pointed out by learned Counsel for the Applicant, the Divisional Commissioner by letter dated 29.08.2009 forwarded proposal to the Government to reinstate the Applicant but it was not responded in any manner. Even thereafter also no such steps were taken for reinstatement of the Applicant and he had to retire on 31.05.2011 on attaining the age of superannuation during the period of suspension itself.

39. True, in D.E. there were serious charges against the Applicant. Total 13 charges were levelled against him but ultimately, he is held guilty for negligence in lack of supervision which resulted into excess payment of Rs.69,716/- to M/s. Deepak Fuel Agency. In other charges, he is exonerated by Enquiry Officer itself. Thus, ultimately punishment imposed is of 6% deduction of pension for 1 year and recovery of Rs.23,172/- from Gratuity. Whereas on other hand, he was subjected to undergo suspension from 17.03.2007 till the date of retirement i.e. 31.05.2011 and that period treated as suspension 'As such' for all purposes. Had D.E. was completed in terms of various instructions and circulars issued by the Government within reasonable time or had he be reinstated in 2009 as proposed by the Divisional Commissioner, he would not have suffered such a long suspension period and consequent monetary loss to which he is now subjected to. Now, he is subjected to

suffer huge monetary loss though on the other hand punishment in D.E. is of less monetary effect. If such order of treating entire period of suspension is upheld, it would amount to more severe punishment than the punishment actually imposed in D.E. As such, considering the nature of punishment imposed in D.E vis-à-vis undue and unreasonable delay in conclusion of D.E. the impugned order of treating entire suspension period of suspension 'As such' would be highly unjust and oppressive. The Respondents ought to have reinstated the Applicant in service in view of proposal of Divisional Commissioner dated 29.08.2009. Therefore, the period of suspension will have to be restricted from 17.03.2007 to 31.08.2009. The Applicant ought to have been reinstated at least from 01.09.2009. Therefore, interreference in impugned order is essential so as to minimize the monetary loss caused to the Applicant. In my considered opinion, it would be appropriate to consider the suspension period from 17.03.2007 to 31.08.2009 and he deem to have been reinstated in service w.e.f. 01.09.2009 and entitled to all consequential service benefits for the period from 01.09.2009 till 31.05.2011.

40. The cumulative effect of the aforesaid discussion leads me to conclude that challenge to the impugned order of punishment in O.A.No.928/2019 holds no water and the said O.A. deserves to be dismissed. Insofar as O.A.No.937/2019 is concerned, it deserves to be allowed partly and suspension period needs to be restricted to 17.03.2007 to 31.08.2009 and the period from 01.09.2009 to 31.05,2011 deserves to be treated as duty period with all consequential service benefits. Hence, the following order :-

ORDER

(A) O.A. No.928/2019 is dismissed.

(B) O.A.No.937/2019 is allowed partly.

(C) Impugned order dated 29.06.2018 in O.A.No.937/2017 is modified and suspension period be restricted to 17.03.2007 to 31.08.2009.

(D) The Applicant be deemed to be reinstated in service w.e.f. 01.09.2009 till retirement i.e. 31.05.2011 and the said period be treated as 'duty period' for all consequential service benefits and it be paid to him within two months from today.

(E) No order as to costs.

Sd/-

(A.P. Kurhekar)
Member (J)

Place: Mumbai
Date : 11.01.2023
Dictation taken by: V.S. Mane
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