

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.93 OF 2017**

**DISTRICT : PUNE**

Dr. Ravishankar Laxmanrao Sathe, )  
Ex. Resident Medical Officer, )  
(Out Reach) in the office of )  
Assistant Director of Health )  
Services (Lep), Divisional Deputy )  
Director of Health Services, )  
Mental Hospital Compound, )  
Thane )

**....APPLICANTS**

**VERSUS**

1. The State of Maharashtra, )  
Through Additional Chief )  
Secretary, Public Health )  
Department, office at )  
Mantralaya, Mumbai 400 032 )
2. The Hon'ble Minister of )  
State for Public Works )  
Department, M.S., Mumbai )  
Mantralaya, Mumbai 400 032 )

**...RESPONDENTS.**

Mr. Bhushan A. Bandiwadekar, learned Counsel for the Applicants.

Ms. K.S. Gaikwad, learned Presenting Officer for the Respondents.

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

**RESERVED ON** : **05.03.2024**

**PRONOUNCED ON** : **21.03.2024**

## **J U D G M E N T**

1. Applicant, Resident Medical Officer challenges the dismissal order dated 26.06.2014 in the Departmental Enquiry (D.E.). He further challenges the order of dismissal of his appeal on 07.10.2015.

2. Learned Counsel Mr. Bandiwadekar has submitted that the Applicant was to retire on 30.06.2014. However, four days prior to his retirement the Disciplinary Authority passed the order of his dismissal in the D.E. Learned Counsel has pointed out to order dated 14.02.2006 wherein enquiry was initiated against the Applicant for causing financial loss to the Government when he was holding additional administrative charge of Drawing and Disbursing Officer (DDO) in General Civil Surgeon, Hospital Akola. After the retirement the Applicant settled at Pune and therefore he filed this O.A. before the M.A.T. Bench, Mumbai. Learned Counsel has submitted that the Applicant neither had knowledge nor the experience of Financial Accounting as he is a Medical Officer. He was compelled to do the job of DDO. Though the Applicant was transferred from Akola to Thane but the applicant was not relieved as additional DDO and thereafter he was relieved. He has pointed out Exhibit-D, dated 23.05.2023 revealing a fact that earlier the additional charge was given to one Mr. V.V. Choudhary by order dated 23.05.2003. On 24.06.2003 the Civil Surgeon informed the

Applicant that Mr. Choudhary had refused to accept the additional charge of DDO so again the Applicant was compelled to take the additional charge of DDO. The period of alleged misconduct is during the period from 01.04.2003 to 31.03.2004. The Applicant is facing allegations that he has paid excess amount on five incidents causing total loss to the State to the tune of Rs.31,69,076/-. The said amount is bifurcated charge-wise as follows :-

Charges framed	Amount spend	Excess amount	Remains
Charge 1	Rs.8,48,057/-	Rs.4,02,405/-	On miscellaneous repairs from Personal Legal Account.
Charge 2	Rs.19,17,351/-	Rs.10,46,120/-	Expenses were made in respect of purchase of minor articles from Alfa Mahila Gruh Udhdyog Co-operative Society.
Charge 3	Rs.20,06,522/-	Rs.11,10,053/-	Purchases were made as per National Consumer Federation's Scheme 'Kemdhenu'.
Charge 4	Rs.3,28,960/-	Rs.1,37,360/-	Purchases of various were made from M/S. Manorama Mahaila Audhyogik Sahakari Sanstha, Akola
Charge 5	Rs.10,40,967/-	Rs.4,62,927/-	Purchases were made under 24 heads from Rashtriya Pbhokta Sahakari Sangh, Shakha Akola.

Charge 6	Rs.4,80,165/-		Payment of purchases was made in cash
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3. Applicant has relied on paragraph 27 of affidavit-in-reply dated 06.09.2017 (page 184) filed on behalf of Respondent No.1 through Mr. Sakharam Nura Gavit, Under Secretary, office of Principal Secretary, Public Health Department. It is stated in the affidavit that approval of any expenses is required to be taken from the Deputy Director of Health Services, Akola Circle, Akola. It is further stated that as per letter dated 08.07.2003 the Deputy Director has sanctioned permission for the expenditure of amount from Personal Ledger Account with terms and conditions laid down in the G.R. dated 12.12.2002 as Panchasurtri. Learned Counsel has submitted that the G.R. dated 12.12.2002 is a standard G.R. wherein the rates are finalized and approved by the District Supply Officer and so nothing is decided at the level of the DDO and so those officers are to be held guilty. The Civil Surgeon who gave the sanction was also subjected to enquiry. D.E. was closed against him on account of his death. Learned Counsel has submitted that D.E. was initiated against seven persons including the present Applicant.

4. Learned Counsel Mr. Bandiwadekar has submitted that the post of Administrative Officer was no longer in existence in District Hospital, Akola (General Civil Hospital) as the said post along with

118 other posts were shifted to the newly created other medical college, Akola. Hence, he was not the final authority to take administrative decision and final decision regarding purchase and the applicant has a Medical background. He relied on pleadings at 6.20(c) where it is averred that though Mr. Choudhary was given additional charge of DDO being Administrative Officer, he refused so the charge was given to the applicant who was not conversant with accounts. Respondents have admitted the contents in paragraph 6.20(c) in their affidavit dated 06.09.2017 at paragraph 25.

5. Learned Counsel for the applicant relied on the file noting of the Respondents. Learned Counsel submits that what is not proved in the departmental enquiry by the Enquiry Officer is shown as proved in the show cause notice given by the Respondents to the applicant. By letter dated 17.3.2009 applicant was called upon to submit his say to the show cause notice. The enquiry report was submitted by the Enquiry Officer on 7.8.2008 and on 17.3.2009 Respondents issued reply on the basis of the Enquiry report. On 31.3.2012, the Respondents issued show cause notice after dismissal sent by the Disciplinary Authority. On 30.6.2014 he would have retired from service. However, before 4 days he was issued the order dated 26.6.2014 dismissing the

applicant from service. The Enquiry Officer has held that no conspiracy is proved. However, the Appellate Authority held that the conspiracy is proved. Therefore, learned counsel has relied on the ratio in the case of **Yoginath Bagde Vs. State of Maharashtra & Ors, AIR 1999 SC 3734**, wherein it is held that Disciplinary Authority when disagrees with the findings of the Enquiry Officer, then the Disciplinary Authority should give tentative reasons of disagreement. By order dated 8.10.2012, the Respondents cancelled the show cause notice dated 31.5.2012 and issued fresh show cause notice. It is stated that the applicant has conspired with Mr Padmane and Kale. Learned Counsel submits that the show cause notice dated 8.10.2012 is defective on the ground that no reasons were given. It reveals that there is predetermination of the decision by the Disciplinary Authority. Applicant filed reply to the show cause notice.

6. Respondents issued second show cause notice to the applicant on 8.7.2013. Learned counsel submitted that it runs contrary to the show cause notice given earlier and proposed punishment is not given.

7. Learned Presenting Officer has relied on the affidavit-in-reply dated 04.09.2023 filed on behalf of Respondent No.1 through Mr.

Anil Vithal Saware, Under Secretary, in the office of Public Health Department, Mantralaya, Mumbai. Learned P.O. has also relied on the affidavit-in-reply dated 06.09.2017 filed on behalf of Respondent no.1, through Mr. Sakharam Nura Gavit, Under Secretary, in the office of Principal Secretary, Public Health Department, Mantralaya. She has pointed out paragraph 12 of the said affidavit wherein the Joint Departmental Enquiry against Dr. Ambhore, Mr. Padmane, Mr. G.M. Kale, Mr. M.M. Rathod, Dr. S.N. Pawade and Dr. Thosar has been initiated by the Department and the punishment was given as under :

Sr. No.	Name & Designation	Punishment
1.	Dr. A.N. Ambhore, (the then District Civil Surgeon)	In view that Mr. Ambhore died on 24.01.2009, before declaration of punishment, it is naturally, exonerated from that D.E.
2	Mr. Padmane, the then Asst. Superintendent/Store Keeper	100% pension benefit permanently withheld by the order dated 19.01.2015. He further preferred appeal before the Hon'ble Governor and the same was rejected by order dated 30.09.2015.
3	Mr. G.M. Kale, the then Junior Clerk/Store keeper	Rs.5000/- per month for five years in five steps by order dated 19.01.2015. He further preferred appeal before the Hon'ble Governor and the same was allowed by order dated 15.10.2015. Hence his punishment was cancelled.

Learned P.O. has submitted that earlier Dr. S.N. Pawade and Dr. Thosar were appointed and thereafter Dr. Thosar has been appointed as District Civil Surgeon. She has argued that Dr. Sathe breached the rules and the action of dismissal is legal and O.A. to be dismissed.

8. Considered submissions. In the letter dated 23/31.05.2003, Exhibit-D it is stated that the Civil Surgeons handed over the charge of the Administrative Officer to Mr. Choudhary as an Administrative Officer. However, Mr. Choudhary refused to hold the said charge of DDO therefore by order dated 24.06.2003 the District Civil Surgeon of Akola directed the Applicant to hold the charge of DDO mentioning that the post of DDO was transferred to the Medical College so there cannot be any order.

9. We are unable to appreciate the submissions of learned P.O. that the Applicant should have written to the authority requesting for not giving him charge of DDO when he had no experience in that field. It is not the case that the Applicant himself has asked for giving him power to work as DDO. It is admitted fact by the Respondents also that the Applicant was not having any background of Commerce or Accounts, but he is a person from Medical field and if it was so the authority should not have given



him powers of DDO. Further as per G.R. dated 12.12.2002 the rates are finalized and approved by the District Supply Officer and not at the level of the DDO. Applicant is not held guilty by the Enquiry Officer for misappropriation of amount or falsification of accounts but for not following proper procedure of calling tenders and giving contracts to some NGO's. However, it is pointed out to us that the contracts were not given to only one NGO but the orders were placed for the work or material with different NGO's and the money was paid to them. The Applicant is not facing charge that the product or service for which Respondent-State paid amount was not received by the State. The entire grievance is that the Government had to pay more amount than the amount of market rates. While invoking the powers under judicial review, we are not sitting in appeal and therefore we cannot sift or weigh evidence tendered before the Enquiry Officer. However, we definitely can look into competency of the Delinquent Officer to work as D.D.O. and his powers. As stated above, the final approving authority was not the applicant.

For Example, in respect of proved charge of the payment of each amount of Rs.4,80,000/- is concerned, the defence is taken that the Civil Surgeon has directed the cashier i.e., Co-delinquent

Officer Mr. Rathod to pay the amount by cash. Nowhere it is mentioned that the payment was not made of Rs.4,80,000/- but the contractor /NGO has complained that they received less amount than Rs.4,80,000/-. Thus, the mode of payment which was not procedurally correct was adopted but this cannot be treated as illegal.

10. It is settled position of law laid down in case of **Yoginath Bagde** that the Disciplinary Authority if is in disagreement with the findings given by the Enquiry Officer then, the authority while giving show cause notice to the Delinquent Officer it should expressly mention the tentative reasons for the disagreement. In the present case, in the final order dated 26.06.2014 the Disciplinary Authority has mentioned that the Applicant has conspired with the other employees, then the Civil Surgeon and with the Suppliers and without taking permission of the competent authority the material was purchased. Conclusion is factually wrong. The competent authority to give permission for approval is Deputy Director (Health) and he has given permission. Moreover, Disciplinary Authority has held that there was conspiracy between the Delinquent Officer and the other employees i.e., Co-delinquent Officer. However, such finding is not given by the Enquiry Officer

in his report dated 07.08.2008. The Enquiry Officer did not give finding of the conspiracy and the said Charge No.3 is partly proved and for that gave reasoning that it is a matter of only payment of excess amount than the market rate. However, to prove payment of excess amount it is necessary to bring evidence showing comparison between the correct amount which should have been paid for that material or service and actual amount which is paid. The Enquiry Officer has observed that there can be variation in the rates depending on various factors such as quality, size, nature etc. of the product or service etc.

12. Considering this we are of the view that the ratio laid down in the case of **Yoginath Bagde** is not followed. We further find no merit in the order passed by the Disciplinary Authority. Further, for three years no steps were taken by the Disciplinary Authority till it gave show cause notice on 31.03.2012 to the Applicant. The question is put as to why the Disciplinary Authority took 3 years to give notice to the applicant. Notice received by the applicant on 23.5.2012 and reply was given on 31.5.2012. On 21.6.2012 supplementary reply was given by the applicant raising contention on the point of **Yoginath Bagde's case**. Thus, there is unexplained delay of three years. The Disciplinary Authority while

mentioning in show cause notice that the report of the Enquiry Officer is not acceptable had stated that why the Applicant should not be dismissed. The Notice should be explanatory with the tentative reasons of disapproval of the Disciplinary Authority.

13. Under such circumstances, we are of the view that the Disciplinary Authority did not give proper fair and sufficient opportunity to the Delinquent Officer to answer, which is against the principles of natural justice. We are of the view that indulgence is required in this matter, we pass the following order :

**O R D E R**

- (A) O.A. is allowed and order dated 26.06.2014 passed by Respondent No.1 and order in appeal dated 07.10.2015 passed by Respondent No.2 are quashed and set aside.
- (B) Applicant, Delinquent Officer is to be reinstated from the date he was dismissed from service and he is entitled to all consequential service and pecuniary benefits with interest at the rate of 6% p.a.

SD/-

**(Medha Gadgil)**  
**Member(A)**

SD/-

**(Mridula Bhatkar, J.)**  
**Chairperson**

prk/ank