

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.963 OF 2017

DISTRICT : Mumbai

Shri Nitin Bharat Wagh)
Age : 40 years, Working as Scholar Asst.)
In the office of Marathi Vishwakosh, Wai,)
Dist. Satara, R/at C/o. Harshwardhan)
Wagh, Flat No.3, Blue Bell, A-Wing,)
Hiranandani Garden, Powai, Mumbai.)...**Applicant**

Versus

1. Maharashtra Rajya Marathi)
Vishwakosh Nirmitti Mandal, O/at.)
2nd floor, Ravindra Natya Mandir,)
Prabhadevi, Mumbai 25.)
2. The State of Maharashtra, through)
Principal Secretary, Marathi)
Language Dept., New Admin. Build.)
M. K. Marg, H.R. Chowk,)
Mantralaya, Mumbai 32.)

Shri Nitin B. Wagh, Applicant in person.

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

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 28.01.2020

JUDGMENT

1. Applicant has challenged the impugned order dated 05.08.2017 passed by the Appellate Authority thereby imposing punishment of withholding of two increments with cumulative effect under Rule 5(1)(iv) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (herein after referred to as 'Rules 1979' for brevity).

2. The Applicant was subjected to two departmental Enquires (D.Es) for alleged misconduct. In first D.E., he was exonerated by the Appellate Authority. However, simultaneously second D.E. was

initiated wherein earlier punishment of compulsory retirement was imposed but later the Appellate Authority modified it by order dated 05.08.2017. The Applicant sought to contend that second D.E. during subsistence of first D.E. is not permissible, therefore, at the very outset, it would be essential to set out certain admitted facts pertaining to both enquiries which are as follows:-

(a) The Applicant is working as Scholar Assistant in the office of Marathi Vishwakosh, Wai, Dist. Satara under the control of Respondents.

(b) One Smt. Shilpa Bharaskar, Editorial Assistant working under the Applicant lodged complaint on 15.07.2015 alleging sexual harassment at work place against the Applicant.

(c) In pursuance of the complaint made by Smt. Shilpa Bharaskar, the matter was referred to internal committee for enquiry as contemplated under prevention of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as 'Act 2013').

(e) In pursuance of enquiry the report submitted by internal committee, the Disciplinary Authority has imposed punishment of withholding of two increments with cumulative effect by order dated 04.03.2016 under Rule 5 (iv) of 'Rules 1979'.

(f) Being aggrieved by the said punishment, the Applicant has preferred appeal before the Government which was allowed by order dated 10.04.2017 and punishment was quashed on the ground of non compliance of mandatory provisions of 'Act 2013'.

(g) Simultaneously, during first departmental proceeding, the Applicant was suspended by order dated 06.05.2016 in contemplation of D.E. exercising the Rule 4(1) of Rules, 1979 for another misconduct.

(h) Accordingly, for second D.E., the charge sheet was issued to the Applicant on 24.05.2016.

(i) The Applicant instead of giving reply to the charge sheet, he made an application dated 10.06.2016 (Page No.41 of PB) alleging that initiation of D.E. is totally illegal and it cannot be continued till the decision of his appeal filed challenging order dated 04.03.2016 whereby punishment of withholding two increments was imposed in first D.E.

(j) Disciplinary Authority has appointed Shri R. K. Hushare as Enquiry Officer by order dated 20.07.2016.

(k) Enquiry Officer summoned the Applicant to remain present for enquiry by letter dated 19.08.2016.

(l) However, the Applicant instead of remaining present before the Enquiry Officer submitted an application on 01.09.2016 (Page No.130 of PB) stating that he will not attend D.E. proceeding as the proceeding is totally illegal and he has no faith on the Enquiry Officer. He further warned the Enquiry Officer that he should not call him again and again and it is metal harassment to him.

(m) As the Applicant did not participate in the enquiry despite notice to him, the Enquiry Officer conducted enquiry examined ten witnesses and submitted enquiry report dated 11.01.2017 to the Disciplinary Authority holding the Applicant guilty for the charges leveled against him.

(n) The Disciplinary Authority after serving enquiry report to the Applicant and after considering his explanation imposed punishment of compulsory retirement by order dated 01.04.2017 under Rule 5(vii) of 'Rules 1979'.

(o) Being aggrieved by the punishment, the Applicant has preferred appeal before the Government which was partly allowed by order

dated 05.08.2017 whereby the punishment of compulsory retirement was modified converting into punishment of withholding of two increments with cumulative effect.

(p) The order dated 05.08.2017 passed by the Appellate Authority is now under challenge in the present O.A.

3. The Applicant in person raised following grounds mainly in O.A. to challenge the legality of impugned order of punishment passed by the Appellate Authority on 05.08.2017.

- (A) In view of initiation of D.E. earlier on the complaint of Smt. Shilpa Bharaskar, initiation of second enquiry is improper.
- (B) Absence of fair opportunity in D.E. and non observance of principle of natural justice.
- (C) Second D.E. was initiated out of vengeance.
- (D) The charges framed in second D.E. were not so serious so as to initiate the D.E. under Rule 8 of 'Rules 1979' which pertains to major punishment.

4. Per contra, learned C.P.O. submits that first D.E. and second D.E. are totally unconnected being based on distinct and independent cause of action/misconduct of the Applicant. She has further pointed out that the Applicant himself abstained from participating in D.E. which is subject matter of the punishment of withholding two increments with cumulative effect challenged in the present O.A. She has also produced the copies of the evidence of ten witnesses recorded by the Enquiry Officer to substantiate that the charges are sufficiently proved, there being no challenge to their oral evidence.

5. Needless to mention that scope of judicial review in the matter of D.E. and punishment imposed therein is very limited. It is trite that judicial review is not directed against the decision but it is confined to the decision making process. The judicial review cannot extend to the examination of the correctness or reasonableness of the

decision in the matter of fact. The judicial review is not an appeal from the decision but a review of manner in which the decision is made. The principles to be borne in mind in this behalf can be summarized as under:-

- a. When an enquiry is conducted on charges of misconduct by a public servant, the Court/Tribunals concerned to determine-
 - i. Whether the enquiry was held by competent officer,
 - ii Whether rules of natural justice are complied with,
 - iii Whether the findings or conclusions are based on some evidence, and
 - iv. Whether authority entrusted with the power to hold the enquiry has jurisdiction, power and authority to reach a finding of fact or conclusions.
- b. Neither technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding.
- c. The disciplinary authority is the sole judge of facts.
- d. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment.
- e. In a disciplinary enquiry, the strict proof of legal evidence and finding on that evidence are not relevant.
- f. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court or Tribunal.
- g. Findings of the disciplinary authority must be base on some evidence.
- h. The High Court / Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty.
- i. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.”

6. Now turning to the facts of the present case, let us deal with the grounds raised by the Applicant in person.

7. As to point (A) & (C):- True, the Applicant was subjected to two departmental enquiries. First D.E. was initiated on the complaint made by Smt. Shilpa Bharaskar alleging sexual harassment at work place at the hands of Applicant and it was forwarded to internal

committee in terms of provisions of 'Act 2013'. In pursuance of report of internal committee, the Applicant was subjected to punishment of withholding two increments by order dated 04.03.2016. However, in appeal, the Applicant was exonerated from all the charges on the ground of non observance of mandatory requirement of the provisions of 'Act 2013'. As such, the said complaint was confined to the complaint dated 15.07.2015 made by Smt. Shilpa Bharaskar and restricted to her allegation to sexual harassment at work place.

8. Whereas, during pendency of first D.E., it was noticed that the Applicant's behavior was adamant and he was not obeying the directions issued by superiors. Memo dated 06.09.2015, 27.01.2016, 02.03.2016 were issued to him but there was no improvement in his behavior. The department, therefore, referred the matter to Respondent No.2-Principal Secretary, Marathi Language Department, Mumbai vide report dated 16.02.2016 and 30.03.2016 (Page Nos.110 and 112 of PB). The Applicant was found not diligent in discharging duties. He was, therefore, suspended by order dated 06.05.2016 in contemplation of D.E. Thereafter, the charge sheet was issued on 24.05.2016 under Rule 8 of 'Rules 1979' which provides for procedure for imposing major penalty.

9. True, while first D.E. was not in progress, second enquiry was initiated by issuance of charge sheet dated 24.05.2016. However, it is explicit that both the departmental enquiries were based on totally different cause of action and misconduct. The charges levelled against Applicant in these inquiries are totally different inviting fresh departmental enquiry. There is no overlapping or conflicting of charges.

10. It would be apposite to see the charges framed in first D.E. as well as in second D.E. which would make the picture clear. In first D.E., charges were as follows:-

१. कु.शिल्पा भारस्कर, संपादकीय सहाय्यक यांना मानसिक त्रास देणे, सतत भिती व दडपणात ठेवणे.
२. कु.भारस्कर यांना इतर सहका-यांशी बोलू न देणे व सर्वासमक्ष त्यांच्यावर ओरडणे, रागावणे, अपमानित करणे.
३. कु.भारस्कर यांना स्वतःच्या घरी बोलावणे व त्यांनी नकार देताच त्यांच्या घरी जाऊन असभ्य भाषेत आरडाओरडा करणे, त्यांच्या घरच्या मोबाईल वरून त्यांना अशिल्ल शिवीगाळ करणे.
४. कु.भारस्कर यांच्या मैत्रिणीच्या घरी जाऊन त्यांचा शोध घेणे, त्यांच्या चारित्र्याबाबत चौकशी करणे.
५. दि.१५.०७.२०१५ रोजी कु.भारस्कर यांना त्यांनी कार्यालयाकडे आपल्या वागणुकीबद्दल तक्रार केल्याबद्दल त्यांना धमकावणे.
६. दि.२२.०७.२०१५ रोजी कु.भारस्कर यांच्याकडे एकटक बघत रहाणे व गाणी म्हणणे.
७. कु.भारस्कर यांना ई-मेल पाठवून गर्भित धमक्या देणे.
८. कु.भारस्कर यांच्याबाबत इतर सहका-यांकडे बदनामी करणे.’’

Where as in second D.E., charges framed were as follows:-

“श्री.नि.भ.वाघ, विद्याव्यासंगी सहाय्यक, मराठी विश्वकोश कार्यालय, वाई जि.सातारा यांच्याविरुद्ध ठेवण्यात आलेले दोषारोपांचे स्वरूप खालीलप्रमाणे:-

श्री.नि.भ.वाघ यांनी कार्यालयीन कामाकाजासंदर्भात कार्यालयीन आदेश व शिस्तीचे पालन न करणे, उध्दट व उर्मटपणाने वागणे, हुज्जत घालणे, कार्यालयीन वेळेत स्वतःच्या जागेवर तासनतास हजर न राहणे, कार्यालयीन वेळेत कानात हेडफोन लावून बसणे, कार्यालयीन कामे करण्यास टाळाटाळ करणे, कार्यालयीन कामकाजात अडथळा आणणे,

स्वयंमूल्य निर्धारण अहवालात नेमून दिलेल्या कामाच्या उद्दिष्टांमध्ये अनुचित, शासकीय कर्मचा-याला अशोभनीय असे विवरण देणे, त्या माध्यमातून महिला कर्मचा-यांविषयी अनादर व तुच्छता दर्शविणे. श्री.नि.भ.वाघ यांच्यावर झालेल्या कारवाईबाबत महिला कर्मचा-यास जबाबदार धरणे, त्यांना धमकावणे, अश्लील शिवीगाळ करणे, कार्यालयीन कर्मचा-यांजवळ त्यांची बदनामी करून त्यांचा मानसिक छळ करणे, कार्यालयीन शिस्तीचा भंग करणे अशा बाबीद्वारे श्री.नि.भ.वाघ यांनी महाराष्ट्र नागरी सेवा (वर्तपूक) नियम १९७९ मधील नियम क्र.३ सचोटी कर्तव्य परायणता इत्यादी राखण्यासंबंधीचे शासकीय कर्मचा-यांची कर्तव्य (एक) मधील (एक), (दोन), (तीन) चा भंग केला आहे.’’

11. Thus, it is manifest that the charges framed against the Applicant in second D.E. were totally different and had no connection with the charges levelled in first D.E. Therefore, contention of the Applicant that second D.E. was not permissible holds no water. The allegations of victimization are without any foundation. Indeed, in first D.E. punishment was set aside for non observance of mandatory provisions of ‘Act 2013’. During the finality of first D.E., the Applicant again indulged in certain misconduct, and therefore, second D.E. was initiated. I see no irregularities or illegality in initiation of second D.E.

12. In view of above, it cannot be said that second D.E. was initiated out of vengeance as sought to be canvassed by the Applicant. The second D.E. was initiated having found that the Applicant was

behaving arrogantly with the colleagues and was not performing the work given to him. He was behaving in such a manner which was not conducive to the discipline of the office, and therefore, second D.E. was initiated. In D.E., ten witnesses were examined to prove the charges levelled against Applicant. The evidence had gone unchallenged as the Applicant abstained from participating in enquiry. Therefore, the contention raised by the Applicant that he was victimized by initiating D.E. is devoid of merit.

13. As to point (B) :- The Applicant's contention that he did not get fair opportunity in departmental enquires is totally incorrect as seen from the record. The Applicant was served with charge sheet dated 24.05.2016. However, he did not submit the reply to the charge sheet. On the contrary, he made an application dated 10.06.2016 (Page No.49 of PB) addressed to Hon'ble Minister, Chief Secretary and Principal Secretary raising grievance that D.E. is illegal and document dated 10.05.2016 relied by the department in enquiry is forged document. Indeed, document dated 10.05.2016 is complaint made by Smt. Shilpa Bharaskar about the incidence dated 07.05.2016 (page 121 of PB). In the said complaint, she made serious allegations against the Applicant about his behavior conduct in the office etc. It is three pages complaint which shows that because of suspension, the Applicant had become recalcitrant and was behaving totally in irresponsible manner in the office. He was making noise in the office time and again and used to state that nobody can harm him. She has given details of the incidence occurred on 07.05.2016 and on 11.03.2016 in the office. This complaint was nothing to do with her first complaint dated 17.05.2015 which was restricted to the allegation of sexual harassment at work place. As such, instead of giving reply to the charge sheet, the Applicant submitted letter dated 10.06.2016 to the various authorities. Suffice to say, he was given full opportunity to file reply to the charge sheet but he did not submit reply.

14. Later, Enquiry Officer again issued letter dated 19.08.2016 to the Applicant to remain present to proceed with enquiry. However, instead of remaining present before the Enquiry Officer he sent letter dated 01.09.2016 to Enquiry Officer (page no.130 of PB) stating that he will not remain present for enquiry and again reiterated that second enquiry is impermissible. He further warned the Enquiry Officer that he should not be again called for enquiry purpose as it amounts to mental harassment to him. Thus, despite summoned by the Enquiry Officer, the Applicant did not remain present in the enquiry and abstained himself from participating in enquiry. Thus, he was quite defiant in behavior and himself did not participate in the enquiry. On this background, Enquiry Officer had no other option but to proceed enquiry ex-party and recorded the evidence of ten witnesses including Smt. Shilpa Bharaskar in respect of her complaint dated 10.05.2016. Enquiry Officer has recorded the statement of witnesses on 16.09.2016 and 17.09.2016. Then again the Enquiry Officer has extended one more opportunity to the Applicant by issuing letter dated 17.09.2016 informing to the applicant that if he wants to cross examined the witnesses, he can appear on 30.09.2016. The Enquiry Officer had also forwarded the copies of evidence of the witnesses recorded by him to Applicant along with letter dated 17.09.2016. However, Applicant did not avail this third opportunity. The Enquiry Officer was, therefore, left with no option but to complete the enquiry and to forward the report to Disciplinary Authority.

15. In view of above, the Applicant's grievance that he did not get opportunity and there is a breach of principles of natural justice is absolutely incorrect and has to be rejected. The record clearly spells that more than enough chances were given to the Applicant from time to time but it is Applicant who abstain himself from the enquiry. Suffice to say, the grievance of non observance of principles of natural

justice is totally incorrect. The full and fair opportunity was given to the Applicant and there is no breach of principles of natural justice.

16. As to point (D) :- Indeed, it was for the Disciplinary Authority to decide whether to issue charge sheet under Rule 8 of 'Rules 1979' or under Rule 10 of 'Rules 1979'. Rule 8 of 1979 provides the procedure for initiating D.E. to impose major punishment and Rule 10 of 'Rules 1979' provides the procedure to be followed for imposing minor punishment. The decision or authority rest with the Disciplinary Authority and Applicant cannot detect that instead of adopting procedure under Rule 8 of 'Rules 1979', the charge sheet should have been issued for minor penalty under Rule 10 of 'Rules 1979'. Indeed, the Appellate Authority had imposed minor punishment of withholding of two increments with cumulative effect. I, therefore, see no substance in the contention raised in this behalf.

17. Initially, the Disciplinary Authority has imposed punishment of compulsory retirement. However, the Appellate Authority modified the punishment by imposing punishment of withholding of two increments with cumulative effect. The perusal of order of Appellate Authority dated 05.08.2017 reveals that the Applicant had raised seventeen points before the Appellate Authority which were dealt with by Appellate Authority with reasons and ultimately confirmed the findings of guilt of the Applicant for the charges levelled against him. However, punishment of compulsory retirement found severe, and therefore, it was modified by lesser punishment of withholding of two increments with cumulative effect.

18. As stated earlier, the scope of judicial intervention is very limited. This is not a case where the punishment imposed by the Appellate Authority can be said disproportionate to the charges framed against Applicant nor this is a case of no evidence. The Enquiry Officer has examined ten witnesses to prove the charges and

recorded findings of fact. The Appellate Authority also has given consideration to the evidence as well as grounds raised by the Applicant. The Applicant was given ample opportunity to remain present before Enquiry Officer and to cross examine the witnesses but he was defiant and intentionally did not participate in the proceeding before Enquiry Officer. Suffice to say, principles of natural justice were followed. The Tribunal is not Appellate Authority so as to reassess the evidence which is in fact has gone unchallenged for want of cross examination of the witnesses. Therefore, the findings recorded by the Enquiry Officer and confirmed by the Appellate Authority needs no interference.

19. The totality of the aforesaid discussion leads me to sum up that challenge to the impugned order is devoid of merit and Original Application deserves to be dismissed.

ORDER

Original Application is disposed of with no order as to cost.

Sd/-

(A.P. KURHEKAR)
Member-J