

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.997 OF 2017**

**DISTRICT : RAIGAD**

**Sub.:- Departmental Enquiry**

Shri Avinash Kashinath Gharat. )  
Age : 57 Yrs, Occu.: Nil, )  
Ex. Superintendent (Stores), Forensic )  
Science Laboratories, Vidyanagari, )  
Santacruz (E), Mumbai – 98 and )  
R/at A/P. Choul, Tal.: Alibaug, )  
District : Raigad. )...**Applicant**

**Versus**

1. The Director, Forensic Science )  
Laboratories, Having Office at )  
Vidyanagari, Santacruz (E), )  
Mumbai – 400 098. )  
2. The State of Maharashtra. )  
Through Additional Chief Secretary, )  
Home Department, Mantralaya, )  
Mumbai – 400 032. )...**Respondents**

**Shri Arvind V. Bandiwadekar, Advocate for Applicant.**

**Smt. S.P. Manchekar, Chief Presenting Officer for Respondents.**

**CORAM : A.P. KURHEKAR, MEMBER-J  
DEBASHISH CHAKRABARTY, MEMBER-A**

**DATE : 28.06.2023**

**PER : A.P. KURHEKAR, MEMBER-J**

## **JUDGMENT**

1. The Applicant has challenged the punishment of removal from service by order dated 30.04.2015 passed by Respondent No.1 and also challenged the order passed by Appellate Authority (Respondent No.2) dated 10.07.2017 thereby dismissing the appeal, invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this application are as under :-

The Applicant was serving as Store Superintendent on the establishment of Respondent No.1 – Director, Forensic Science Laboratory, Santacruz, Mumbai. He was served with the charge-sheet dated 22.04.2013 for certifying receipt of goods of the supplier though no such goods were actually supplied and thereby committed breach of financial rules as well as misconduct which is in breach of Rule 3(1) and (2) of Maharashtra Civil Services (Conduct) Rules, 1979 (hereinafter referred to as ‘Conduct Rules of 1979’ for brevity). Interestingly, not a single witness was cited in the list of witnesses. Respondent No.1 appointed Enquiry Officer who called five witnesses including suppliers and they were cross-examined by the Applicant. Strangely, Enquiry Officer in the very beginning of the enquiry allowed the Presenting Officer to examine the Applicant, and thereafter, examined the supplier and two other witnesses viz. Smt. Gavade and Mehboob Khan retired Store Superintendents. The Enquiry Officer held the Applicant guilty for the charges levelled against him. On receipt of report of Enquiry Officer, Respondent No.1 issued show cause notice to the Applicant as to why he should not be dismissed from service to which he submitted his reply denying the charges. Respondent No.1, however, by order dated 30.04.2015 without recording any reasons, even for name sake or any discussion of evidence or defence raised by the Applicant straightway on *ipse dixit* imposed punishment of dismissal from service by order dated

30.04.2015. Respondent No.2 (Appellate Authority) dismissed the appeal on 10.07.2017. Both these orders are under challenge in the present O.A.

3. Following were the charges framed against the applicant in D.E.

“आरोप पत्र

श्री. अ.का.घरत, भंडार अधीक्षक या पदावर दिनांक २२/९/२०११ न्यायसहायक वैज्ञानिक प्रयोगशाळा संचालनालय, मुंबई येथे कार्यरत आहेत. मा. संचालक, न्यायसहाय्यक वैज्ञानिक प्रयोगशाळा संचालनालय, मुंबई यांच्या कार्यालयीन आदेश क्रमांक २७११ व २७१२ दिनांक ६/१२/२०१२ अन्वये संचालनालयाच्या विविध विभागातील जडसंग्रह व उपकरणांची दिनांक १/४/२०१० ते ३१/३/२०१२ क्र.म(st) १३४१-४२ ते १३६७-६८ दिनांक १४/१०/२०२० अन्वये उपकरणे पुरवण्याबाबतचे आदेश दिले होते. प्रस्तुत प्रकरणी आदेशित मालाचा पुरवठा संबंधित पुरवठाधारकांनी केले नसताना त्यांची किंमत अदा करण्यात आली व पुरवठा धारकांनी देय मिळालेच्या पावत्या (२०११) मध्ये दिलेल्या आहेत. सदर उपकरणे दिनांक २६/१२/२०१२ पर्यंत या प्रयोगशाळेत दाखल झालेली नव्हती. आपण सदर उपकरण तात्काळ दिनांक २९/१२/२०१२ रोजी त्यांच्या संचालनालयात दाखल करून घेतल्या आहेत. यावरून आपण शासनाची नितांत सचोटी न राखता वित्तीय नियमाचे उल्लंघन केले व शासकीय रकमेच्या तात्पुरत्या अपहार केला व त्यायोगे आपण महाराष्ट्र नागरी सेवा (नेमपूक) नियम १९७९ चे नियम ३ (१) (एक) चा भंग केलेला आहे.

आरोप दोन -

श्री. अ.का.घरत यांनी जडवस्तू संग्रह नोंदवहीत (Central deadstock register) जडवस्तू व उपकरणांच्या नोंदी नोंदवहीत घेतल्या आहेत. भंडारा अधीक्षक या पदावर आपण काम करत असताना सदर जडवस्तू प्रयोगशाळेत दाखल झाल्यानंतरच त्यांच्या नोंदणी घेणे हे आपले कर्तव्य आहे.

सदर जडवस्तू या प्रयोगशाळेत दिनांक २६/१२/२०१२ पर्यंत दाखल झालेल्या नसतानाही आपण जडवस्तूच्या नोंदी (Central deadstock register) मध्ये केलेल्या आहेत व आपण भंडार विभागातून देयक प्रमाणित केलेली आहेत. सदर जडवस्तूची देयके जरी अदा झालेली नाही तरी सदर जडवस्तू प्राप्त झालेचे प्रमाणपत्र आपण दिलेले आहेत. यावरून आपण स्वकर्तव्यात अक्षम्य हलगर्जीपणा केलेला आहे व प्रयोगशाळेत जडवस्तू आलेले नसतानाही आपण त्याची नोंदी (Central deadstock register) मध्ये केलेल्या आहेत.

यावरून असे निदर्शनास येते की, आपण महाराष्ट्र नागरी सेवा (वर्तपूक) नियम १९७९ चे नियम ३ (१) (दोन) चा भंग केलेला आहे”

4. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Smt. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

5. We have examined the record of enquiry with the assistance of learned Advocate for the Applicant and learned Chief Presenting Officer and found material illegalities in the matter rendering the order of dismissal from service unsustainable in law.

6. To begin with, Enquiry Officer has adopted very strange procedure/method while conducting DE. The Enquiry Officer at the very beginning of the enquiry recorded examination in chief of the Applicant himself and put various questions to him about the supply of goods by suppliers viz. DNA Trading Corporation, M/s. Mahajay Scientific Company and M/s. J.M. Lab Electronic Corporation and tried to extract certain vital information from the delinquent himself which is totally unknown to law. That apart, Applicant was again examined any reference to supply made by Mahajay Scientific Company on 21.07.2013, M/s. J.M. Lab Electronic Corporation on 03.09.2013 and DNA Trading Corporation on 03.09.2013. Then examined Anil Sawant, representative of M/s. Mahajay Trading Company on 24.09.2013. Thereafter, Enquiry Officer proceeded to examine Mehboob Khan and Smt. Gavade, Assistant Store Superintendent. They were cross-examined by the Applicant's next friend. The Applicant then submitted defence statement.

7. In statement of defence tendered before Enquiry Officer, the Applicant tried to blame DDO and other Officials *inter-alia* contending that it was their responsibility to verify the receipt of goods before making payment to the suppliers. However, there is no denying that he certified the receipt of goods and on that basis, DDO made payment though goods were not actually supplied. Goods were supplied by the suppliers quite belatedly. This being so, the Applicant cannot abdicate his responsibility and he should have not made any such endorsement of the receipt of goods.

8. Shri A.V. Bandiwadekar, learned Advocate for the Applicant has pointed out that the order passed by disciplinary authority dated 30.04.2015 removing the Applicant from service is totally unreasoned and cryptic order. We have gone through the order and found merits in his submission. There is absolutely no discussion on the evidence and contentions raised by the Applicant much less appreciation of the evidence in proper perspective. He mechanically accepted the report of

Enquiry Officer and passed very cryptic and laconic order of removal from service. It is thus obvious that the disciplinary authority failed to perform its obligation in law. This crucial aspect is totally ignored by the appellate authority. Coupled with this aspect, there is one more major irregularity in the enquiry proceedings since Enquiry Officer in the very beginning of the enquiry examined the Applicant which is very strange and totally against law. The Enquiry Officer seems to be totally ignorant about the procedure to be adopted while conducting the enquiry. He was required to follow the procedure laid down in Rule 8 of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (hereinafter referred to as 'D & A Rules of 1979' for brevity) which prescribes the stages and mode of conducting enquiry in a specific manner to ensure fairness, but failed to do so.

9. Shri A.V. Bandiwadekar, learned Advocate for the Applicant advertng to the aforesaid factors submits that the impugned orders are unsustainable in law and liable to be quashed. According to him, the novel procedure adopted by the Enquiry Officer by examining the Applicant at the very beginning of the enquiry thereby extracting certain material from his mouth and to confront it with the witnesses vitiates the enquiry and punishment on such enquiry is totally unsustainable. At the same time in alternate submission, he urged that instead of remitting the matter to the disciplinary authority, the Tribunal should consider the material and may pass minor punishment since the charge even if accepted it as a face value, does not invite such a major punishment of removal from service, particularly when the service record of the Applicant is unblemished and had three years' service was in balance on the date of punishment. He, therefore, submits that though normally Tribunal cannot substitute the punishment in the present case it being shockingly disproportionate, the Tribunal may pass order of minor punishment here only in judicial review so as to shorten the litigation and do complete justice.

10. Per contra, Smt. S.P. Manchekar, learned Chief Presenting Officer also fairly concedes major illegalities committed by Enquiry Officer while conducting enquiry. But at the same time, in reference to evidence brought on record, she submits that Applicant cannot be given clean chit since he certified the receipt of goods and it is on that basis, Accounts Section released the payment. She, therefore, submits that sentence be modified by imposing punishment of compulsory retirement.

11. In view of aforesaid material irregularities, surfaced from the record normally we would have inclined to remit the matter to the disciplinary authority with direction to proceed with the enquiry afresh in accordance to law and then to pass appropriate punishment. However, in the present case, the Applicant already attained the age of superannuation on 30.06.2018. Now, he is 63 years' old. Therefore, it would be improper to revert back to the disciplinary authority which may again take much time for the conclusion of DE. We, therefore, proceed to examine the matter further here only and to pass appropriate order to shorten the litigation and to do complete justice by moulding relief befitting to the facts.

12. Having gone through the record, in our considered opinion, the punishment of compulsory retirement would be disproportionate to the charges levelled against the Applicant. All that, the Applicant certified the receipt of the goods to the Accounts Section and on that basis, payment has been made to the suppliers though actually goods were not received by the Department. Indeed, the entry in Dead Stock Register about the receipt of goods are taken by another employee and not by the Applicant. It is explicit from the record, particularly from the evidence of suppliers that though they have not supplied goods received the payments first and then supplied the goods quite belatedly. Notably, the suppliers paid penalty for late supply. As such, the Applicant cannot deny his responsibility as a Store Superintendent to ensure that the Goods are received by the Department and then to certify it for the

payment. This definitely amounts to negligence in discharging the duties. But at the same time, we should not be oblivious of the fact that there was no monetary loss of any kind to the Department. Neither there are any allegations of deriving any such monetary benefit by the Applicant. His service record also does not show any such tendency. This seems to be his first lapse/negligence during the tenure of his long service. We have, therefore, no hesitation to sum-up that the punishment of removal from service is shockingly disproportionate.

13. At the same time, leaving aside totally wrong procedure adopted by the Enquiry Officer, his findings of fact that Applicant certified the receipt of goods though goods were not actually received is clearly borne out from the evidence. All that Applicant tried to blame Accounts Section for making payment and also trying to take the benefit of wrong procedure adopted by the Enquiry Officer. The Applicant being Store Superintendent, it was his responsibility to see the goods are supplied and received by the Department before forwarding the bills to the Accounts Section, but he failed to discharge his duties and mechanically certified it. Such lapse does not warrant such major punishment and it shocks the conscience.

14. Though in judicial review normally Tribunal cannot substitute the penalty, it can be done in exceptional case to shorten the litigation in the facts and circumstances of the case. In this behalf, we are guided by the decision of Hon'ble Supreme Court in **1995 SCC (6) 749 [B.C. Chaturvedi Vs. Union of India & Ors.]**. Hon'ble Supreme Court held as under :-

*“A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of*

*the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.*

15. In this view of the matter, we have no hesitation to sum-up that the punishment of removal from service is shockingly disproportionate and it shocks the conscience of the Tribunal. Having regard to the fact that there was no monetary loss to the Government and the goods were also received subsequently with penalty, in our considered opinion, the disciplinary authority ought to have imposed minor penalty in commensurate with the lapses committed by the Applicant. The disciplinary authority has imposed punishment of removal from service on 30.04.2015. He was to retire on completion of 58 years on 30.06.2018. Therefore, it would be appropriate to substitute the punishment into the punishment of reduction to lower stage in the time scale of pay till his retirement with further direction that he will not earn increments during the said period as per Rule 5(v) of 'D & A Rules of 1979'. Insofar as backwages are concerned, it would be appropriate to grant 25% pay and allowances by reducing him to lower stage in the time scale of pay till his retirement. Hence, the order.

### **ORDER**

- (A) The Original Application is allowed partly.
- (B) Impugned orders dated 30.04.2015 and 10.07.2017 are quashed and set aside.
- (C) The punishment is substituted to reduction to lower stage in the time scale of pay till his retirement with direction that he will not earn any increments during the said period.
- (D) The punishment order shall have effect from 30.04.2015 and notionally, Applicant shall be deemed to be in service and he

be paid 25% pay and allowances by reducing him to lower stage in the time scale till his retirement.

- (E) The Applicant be granted retiral benefits considering his last drawn pay by reducing him to lower time scale with no increments till the date of retirement as directed above.
- (F) Monetary benefits as directed above and further steps for retiral benefits considering his date of retirement as 30.06.2018 be taken within two months from today.
- (G) No order as to costs.

Sd/-  
**(DEBASHISH CHAKRABARTI)**  
**Member-A**

Sd/-  
**(A.P. KURHEKAR)**  
**Member-J**

Mumbai

Date : 28.06.2023

Dictation taken by :

S.K. Wamanse.

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