

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 10 of 2017 (DB)

Vanita Shravanji Perkar,
aged about 52 years, Occ. Government Servant,
R/o Tribal Girls Hostel, Sadak Arjuni, District Gondia.

Applicant.

Versus

- 1) State of Maharashtra,
through its Secretary, Department of Tribal
Development, Mantralaya, Mumbai-2.
- 2) Additional Commissioner Tribal Development,
near RTO, Amravati Road, Nagpur.
- 3) Project Officer, Integrated Tribal development
Project, Deori, District Gondia.

Respondents.

Shri R.V. Shiralkar, Advocate for the applicant.

Shri H.K. Pande, P.O. for respondents.

**Coram :- Shri Shree Bhagwan,
Vice-Chairman and
Shri Anand Karanjkar, Member (J).**

Date of Reserving for Judgment : 6th August, 2019.

Date of Pronouncement of Judgment : 25th September, 2019.

JUDGMENT

Per : Anand Karanjkar : Member (J).

(Delivered on this 25th day of September, 2019)

Heard Shri R.V. Shiralkar, learned counsel for the
applicant and Shri H.K. Pande, learned P.O. for the respondents.

2. The applicant was appointed in service in the year 1996 as Warden. In the year 2010 the applicant was discharging her duty as Warden, Tribal Girls Hostel, Sironcha, District Gadchiroli. There were complaints against the applicant and consequently vide order dated 2/2/2010 she was placed under suspension, in contemplation of the departmental inquiry.

3. The respondent no.2 thereafter served charge sheet dated 26/8/2010 on the applicant. Total 6 charges were levelled against the applicant. The applicant submitted reply to the charge sheet and she denied all the charges. Thereafter the Inquiry Officer was appointed. The Inquiry Officer examined 3 witnesses out of 10, 2 witnesses were crossed examined by the applicant. During pendency of the departmental inquiry, the applicant's suspension was revoked and she was posted at Tribal Girls Hostel, Tumsar, District Bhandara. Thereafter the posting order was modified and the applicant was posted at Saoner, District Nagpur.

4. After the inquiry, the Inquiry Officer submitted report which is at page no.38, Annex-A-7. The Inquiry Officer came to the conclusion that there was no evidence in support of the charges, consequently, the Inquiry Officer held that all charges were not proved.

5. It is grievance of the applicant that the respondent no.2 received the report submitted by the Inquiry Officer in the month of September,2012. The applicant was in anticipation that as the applicant was exonerated by the Inquiry Officer, the respondent no.2 would accept that report and will close the matter. It is submitted that to the surprise of the applicant the respondent no.2 passed order at Annex-A-8 on 19/10/2013 and directed that de-novo inquiry be held as provided under Rule 8 and Rule 7 (3) (1) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (in short "MCS (D&A) Rules of 1979").

6. In consequence of the order at Annex-A-8 new Inquiry Officer was appointed and he conducted the inquiry and submitted the report to the respondent no.2 and informed that the charge nos.3,4, 5 and 6 were partly proved and charge no.1&2 were not proved. The second Inquiry Officer forwarded this report on 5/5/2014 to the respondent no.2. The copy of the report was served on the applicant on 2/1/2015.

7. In this O.A. it is contention of the applicant that the action of the respondent no.2 directing the de-novo inquiry was in violation of law. It is submitted that there is no provision in the MCS (D&A) Rules of 1979 to direct de-novo inquiry. It is submitted that

disregarding the law direction was given by the respondent no.2 vide order dated 19/10/2013 for the de-novo inquiry and therefore the subsequent inquiry conducted by the second Inquiry Officer is contrary to the law and it is liable to be quashed.

8. The second contention of the applicant is that as per the law, the respondent no.2 under obligation to give opportunity of hearing to the applicant before issuing direction for the de-novo inquiry. It is submitted that the impugned order dated 19/10/2013 was passed by the respondent no.2 without hearing the applicant and therefore that order is illegal. The learned counsel for the applicant has placed reliance on the Judgment in O.A.No.636/2010 in case of **Anandrao K. Gajbhiye Vs. State of Maharashtra & Ors.**, decided on 17/04/2013 and the Judgment in case of **Chairman-cum-Managing Director, Coal India Limited & Ors. Vs. Ananta Saha & Ors., (2011) SCC,142.** It is contention of the learned counsel for the applicant for conducting de-novo fresh inquiry, it was necessary to serve fresh charge sheet and as fresh charge sheet was not served, therefore, the proceeding against the applicant is in violation of law.

9. The respondents have submitted reply and justified the action of the respondent no.2. It is submitted by the respondents that the first Inquiry Officer conducted the inquiry in reckless manner. The

Inquiry Officer did not examine care to examine material witnesses for bringing the truth on surface, but he examined only 3 witnesses and mechanically closed the matter holding that the charges were not proved.

10. According to the respondents, as this approach of the first Inquiry Officer was in violation of the law, therefore, the decision was taken by the respondent no.2 for conducting fresh inquiry on the basis of the same charges. According to the respondents, there is no illegality in the second inquiry.

11. Here I would like to examine the first question of law raised by the learned counsel for the applicant that the Disciplinary Authority has no power as per the MCS (D&A) Rules of 1979 to order denovo inquiry.

12. The similar situation was examined by the Hon'ble Apex Court in case of the **Union of India & Ors. Vs. P. Thayagarajan** in Judgment delivered on 24/11/1998. Before the Hon'ble Apex Court submission was made that as per Rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules,1957 that the Disciplinary had no power to set aside and earlier inquiry and order a fresh inquiry. The reliance was placed on the Judgment delivered by the Hon'ble Apex Court in case of **K.R. Deb Vs. Collector of Central**

Excise, Shillong 1971 (2) SCC,102. The Hon'ble Apex Court

observed that as follows –

“A careful reading of this passage will make it clear that this court notices that if in a particular case where there has been no proper enquiry because of some serious defect having crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined, the Disciplinary Authority may ask the Inquiry Officer to record further evidence but that provision would not enable the Disciplinary Authority to set aside the previous enquiries on the ground that the report of the Enquiry Officer does not appeal to the Disciplinary Authority. In the present case the basis upon which the Disciplinary Authority set aside the enquiry is that the procedure adopted by the Enquiry Officer was contrary to the relevant rules and affects the rights of the parties and not that the report does not appeal to him. When important evidence, either to be relied upon by the department or by the delinquent official, is shut out, this would not result in any advancement of any justice but on the other hand result in a miscarriage thereof. Therefore we are of the view that Rule 27(c) enables the Disciplinary Authority to record his findings on the report and to pass an appropriate order including ordering a de-novo enquiry in a case of present nature”.

13. Thus legal position is established by the Hon'ble Apex Court that where it is shown that the inquiry was not conducted in a proper and fair manner and there were serious defects in the inquiry, such as non examination of important witnesses and opportunity to produce the material evidence, then Disciplinary Authority may record reasons and pass appropriate order including a order for de-novo inquiry.

14. We have perused the charge sheet and the inquiry report submitted by the first Inquiry Officer. The charge no.1 was without seeking prior sanction for the leave. The applicant left the duty from 29/1/2010 and 30/1/2010, the charge no.2 was that though the

applicant left the duty without sanctioning the leave on 29/1/2010 and 30/1/2010, she did not make any arrangement for meal, health and residence of the Girls Student in the Hostel. The charge no.3 was the applicant remained absent from 19/8/2009 to 26/8/2009 without prior approval of the leave and though she was absent from the duty from 19/8/2009 to 26/8/2009 she received the salary and the allowances for the period. The charge no.4 was that the applicant used to threaten the Girls Students and used abused the Student in vulgar language. The applicant was insulting her subordinates using their castes and abusing language. The applicant sent the Girls Students in the Hostel to their home town from 13/1/2010 to 20/1/2010, though there were no holidays. It was also mentioned in the charge no.4 that due to reckless behaviour of the applicant the capacity of the Girls Hostel was 75, but in fact only 23 Girls Students took admission in the Hostel. The charge no.5 was that the applicant did not take the entries of the Food Stock utilised for the breakfast, lunch, dinner etc. in the Register and the applicant submitted false bills regarding purchase of vegetables, milk and misappropriated the amounts. The charge no.6 was that due to careless behaviour of the applicant, the Girls Students could not get the diet which was necessary and even in absence of the Girls Students, the applicant

used to mark them present in the Hostel and shown the consumption of the Food Stock. It was also alleged in charge no.6 that the applicant misappropriated amount Rs.831/- and 802/-. It is apparent to note that the total 10 witnesses were cited by the Department, but the first Inquiry Officer recorded evidence of only 3 witnesses and without examining other witnesses closed the inquiry and submitted the report. As a matter of fact it was responsibility of the first Inquiry Officer to inform the fact to the Disciplinary Authority for securing presence of the material witnesses for brining the truth to the surface, but instead of doing this, the first Inquiry Officer examined the 3 witnesses and closed the matter.

15. In view of this material and the serious charges against the applicant, the respondent no.2 came to the conclusion that it was necessary to direct fresh inquiry in the matter. In our opinion, in view of the law laid down by the Hon'ble Apex Court in case of **Union of India & Ors. Vs. P. Thayagarajan** there is no illegality in the order. We would like to consider the material provisions under the MCS (D&A) Rules of 1979. The Rule 9 (1) of the MCS (D&A) Rules of 1979 is as under –

“(9) Action on the inquiry report –

(1) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing remit the case to the

inquiring authority for further inquiry and report, and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of rule 8 of these rules as far as may be”.

16. The Rule 9 (1) has conferred power on the Disciplinary Authority, if the Disciplinary Authority is not the inquiring authority to record the reasons and remit the case to the Inquiry Officer for further inquiry and report. Here we would like to point out that the provision under Rule 9 (1) is similar to the provision under Rule 27 (c) of the Central Civil Services (Classification, Control and Appeal) Rules, 1957, therefore, the situation before us is also gone by the law laid down by the Hon'ble Apex Court and in view of this law we are unable to accept contention of the applicant that the direction issued by the respondent no.2 for fresh inquiry is illegal.

17. It seems that the second Inquiry Officer has recorded the evidence and submitted the report and the report is pending before the respondent no.2 for passing the suitable order. It seems that the Hon'ble Apex Court has issued direction from time to time to complete the departmental inquiry in the outer limit of two years. In the present matter the second Inquiry Officer has submitted the report on 5/5/2014 and the matter is pending for consideration even after expiry of 5 years. In such situation, we think it just to direct the

respondent no.2 to conclude the inquiry within a period of three months from the date of receipt of this order.

18. In the result, the O.A. stands disposed of. No order as to costs.

(Anand Karanjkar)
Member(J).

(Shree Bhagwan)
Vice-Chairman.

Dated :- 25/09/2019.

*dnk

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble V.C. and Member (J).

Judgment signed on : 25/09/2019.

and pronounced on

Uploaded on : 26/09/2019.