

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 166 of 2012 (DB)

Sanjay S/o Kachru Gangavane,
Aged about 38 years,
Occ. Terminated Government servant,
R/o Plot No.91, Jawahar Colony,
Uttam Nagar, Aurangabad.

Applicant.

Versus

- 1) State of Maharashtra,
through it Secretary Industrial Safety and
Health Department, Mantralaya, Mumbai-32.
- 2) The Director of Industrial Safety and Health
Services, M.S. 5th floor, Block No. E,C-20,
Bandara-Kurla Sankul, Bandara (E), Mumbai.
- 3) The Joint Director of Industrial Safety and Health,
Akola.

Respondents.

Shri G.K. Bhusari, Advocate for the applicant.

Shri V.A. Kulkarni, P.O. for respondents.

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

Dated :- 16th October, 2019

JUDGMENT

Per : Anand Karanjkar : Member (J).

(Decided on this 16th day of October,2019)

Heard Shri G.K. Bhusari, learned counsel for the
applicant and Shri V.A. Kulkarni, learned P.O. for the respondents.

2. The applicant is challenging the order passed by the respondent No.3 (Annex-A-1) by which the applicant is dismissing from the service w.e.f. 31/05/2011. The facts in brief are as under –

3. The applicant was appointed in service on 19/01/1996 as Junior Clerk-cum-Typist. The applicant was transferred to Amravati in the year 2008. On 30/12/2010 charge sheet was served on the applicant. The charges were, the Cash Book was not updated, there were wrong entries in the Cash Book. The applicant used to remain absent from the office. The applicant made correspondence with the Director and the Collector directly and provided material information to the third party. The applicant did not deposit the Cheques in time. The applicant did not prepare the list in the year 2010 of the Industrialist who did not file application for the renewal and gave wrong information under the RTI Act. On the basis of this charges there was departmental inquiry. The Inquiry Officer submitted the report on 10/05/2011 and vide order dated 31/05/2011 the applicant was dismissed from the service by the Disciplinary Authority.

4. The applicant is challenging the order of dismissal mainly on the ground that the Disciplinary Authority had already decided to dismiss him from the service and therefore the Disciplinary Authority before service of the charge sheet on the applicant appointed the Inquiry Officer. The second contention is that the applicant was the

only Clerk in the office and for urgent official work he was bound to leave the office, some time he had to lock the office as there was no other responsible person in the office. It is submitted that the applicant was over burdened and due to pressure of the work being a human, mistakes were committed by him which was plainly submitted by him. According to the applicant, this entire material was not considered by the Inquiry Officer and even by the Disciplinary Authority and the Appellate Authority. It is submitted that the applicant was not involved in criminal misappropriation of property or money or corruption or he did not commit any act which can be labelled under the head moral turpitude. It is submitted that as a matter of fact the Inquiry Officer did not examine the evidence and the case submitted by the applicant, the Inquiry Officer simply draw the conclusion that the misconduct was committed by the applicant without assigning a reason. It is contention of the applicant that the procedure followed by the Inquiry Officer in not examining material witnesses has caused grave injustice. It is submitted that the Disciplinary Authority had already predetermined to dismiss the applicant from the service and therefore there was farce of inquiry and for the minor misconduct punishment of dismissal is awarded, therefore, it is shockingly disproportionate.

5. We have perused the papers. It seems that charge sheet was served on the applicant on 30/12/2010 and vide Annex-A-7 the

Inquiry Officer was appointed on 22/12/2010. The learned P.O. was unable to explain what was the reason to appoint the Inquiry Officer before service of the charge sheet and before receiving reply of the applicant to the charge sheet. Under these circumstances, it can be said that there was undue haste shown in appointing the Inquiry Officer before serving the charge sheet on the applicant without considering his reply, therefore, we do see substance in the contention that the Disciplinary Authority was prejudiced against the applicant.

6. We have perused the report of the Inquiry Officer. It appears that the Inquiry Officer noted down in the report what were the contentions of the applicant. It was stated by the applicant before the Inquiry Officer that the Disciplinary Authority Shri Kalaskar was holding charge of the Joint Director, he was unable to remain present in the Amravati office. The another post of Clerk-cum-Typist was vacant, consequently the applicant was forced to take decision at his own level. It was also stated by the applicant that when the Peon remains absent due to leave, he was compelled to lock the office for visiting Akola Headquarter for the urgent official work. It was clearly stated by the applicant in his reply to the charge sheet and before the Inquiry Officer that he was heavily burdened, he was discharging duties of two Clerks and this was the reason for the errors in the work. It was also stated that the errors were not intentional, but due

to over burden and as there was lack of guidance from the higher authorities. It is pertinent to note that the Inquiry Officer did not apply any mind to this case of the applicant and came to the conclusion that the applicant committed the misconduct. After perusing the report of the Inquiry Officer, we are compelled to say that without recording any reason the Inquiry Officer has mechanically recorded findings on all the charges as partly proved. It is pertinent to note that the Inquiry Officer did not explain which part of the each charge was proved and which part of the charge was not proved. In view of this, inference is to be drawn that the report submitted by the Inquiry Officer was mechanical and without examining the evidence inquiry the report was prepared and submitted.

7. So far as the role of the Disciplinary Authority is concerned, we would like to mention that the Disciplinary Authority did not examine the record of the inquiry, did not consider what was the evidence, did not consider what was the nature of the charges and straight way imposed the extreme penalty i.e. dismissal from the service. The legal position is settled that the Court or Tribunal shall not interfere in the decision taken by the Disciplinary Authority, unless it is shown that the findings of the Inquiry Officer are based on no evidence or findings are perverse or the punishment is shockingly disproportionate. In the present case except the evidence of two witnesses examined in the inquiry, there was no reliable evidence

before the Inquiry Officer to show that on which paper there was over writing or erasers made by the applicant, on which date the applicant was not present in the office, which information was directly supplied by the applicant to the third parties. The evidence of both the witnesses was vague. It seems that the Inquiry Officer without examining the papers and the oral evidence and without giving any reason came to the conclusion that the charges were partly proved. When any judicial authority is recording a finding that the charge is partly proved that authority is under obligation to show which part of the charge is proved and which part of the charge is not proved.

8. So far as the punishment of dismissal is concerned, it is an extreme punishment, therefore, there must be some cogent reasons for awarding such extreme punishment. We have perused the order passed by the Disciplinary Authority which is at Annex-A-1 and the order passed by the Appellate Authority. Both the Authorities did not consider the nature of the misconduct and the punishment awarded. The legal position is settled that where the Disciplinary Authority records a finding which is unsupported by any evidence or a finding which no reasonable person could have arrived at, then the Court or Tribunal can interfere in the matter. In such situation, the Court or Tribunal may interfere in the disciplinary inquiry and examine the correctness of the order passed by the Disciplinary Authority on the basis of the charges and the evidence in the inquiry. As a matter

of fact there was obligation on the inquiring authority as per the Rule 8 (20) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 to examine the delinquent government servant, if he did not examine himself and question him generally on the circumstances appearing against him. The Rule 8 (20) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 is as under -

“Rule 8 (20) The inquiring authority may, after the Government servant closes his case and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him”.

9. After reading the rule it is clear that the first part of the rule is directory it says that when the delinquent has examined him, then the Inquiry Officer may question the delinquent generally on the circumstances appearing against him, but second part of the rule is mandatory which says that if the government servant has not examined himself, then the Inquiry Officer shall generally question him on the circumstances appearing against him. In this case the facts are that the Inquiry Officer did not comply this provision and therefore there is a violation of the mandatory provision. Secondly the Inquiry Officer did not apply mind to the specific contentions which were raised by the applicant in his reply to the charge sheet and oral submission before the Inquiry Officer. The Inquiry Officer did not

examine what were the reasons for the errors committed by the applicant. In our opinion apart from the Inquiry Officer, it was duty of the Disciplinary Authority and the Appellate Authority to consider this aspect, but it was not done. We have already discussed that all the charges levelled against the applicant were of a minor nature, the applicant did not commit any act intentionally, he was pressurised due to work and as he was the only person in the office, then in absence of the Peon, he was bound to lock the office for the urgent office work. Under these circumstances, it was necessary for the Disciplinary Authority to consider these aspects while awarding punishment. Keeping in view all these aspects we are compelled to say that the procedure laid down under rule 8 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 was not followed by the Inquiry officer and also by the Disciplinary Authority.

10. We would like to point out that second show cause notice was not served by the Disciplinary Authority regarding the proposed punishment and this is also violation. That considering the nature of the imputations against the applicant, we are compelled to say that the punishment of dismissal from the service is shockingly disproportionate. In this case since 31/05/2011 the applicant is out of service and this is too much punishment for him, therefore, it is not suitable in the interest of justice and considering the nature of the charges to remand back the matter to the Disciplinary Authority. In

the result, we hold that the punishment awarded cannot be sustained.

Hence, the following order –

ORDER

The O.A. is allowed. The order of dismissal dated 31/5/2011 passed by the respondent no.3 as well as the order passed by the Appellate Authority are set aside. The applicant be reinstated in service with continuity and 50% back wages. The respondents shall comply this order within 30 days from the date of this order. On failure of the respondents to comply the order within 30 days, they shall be liable to pay interest @7% p.a. till realisation of the back wages. No order as to costs.

(Anand Karanjkar)
Member(J).

(Shree Bhagwan)
Vice-Chairman.

Dated :- 16/10/2019.

*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 : 16/10/2019.

and decided on

Uploaded on : 17/10/2019.