MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO. 202 / 2020 (S.B.)

Anil S/o Fakiraji Dnyanbonwar,
Age about 56 years, Occupation:-Service,
Office at : P.S.O. Etapalli,
Tq. Etapalli, Dist. Gadchiroli.

Applicant.

Versus

1) The State of Maharashtra,
through its Secretary,
Department of Home,
Mantralaya, Mumbai- 32.

2) Additional Director General of Police,
(Administration), Maharashtra State,
Shahid Bhagat Singh Marg, Kolaba,
Mumbai-400 001.

3) Deputy Inspector General of Police,
Gadchiroli Range, Camp at Nagpur
Office:Civil Lines, Nagpur.

4) The Superintendent of Police,
Gadchiroli, Dist:-Gadchiroli.

5) Police Welfare Branch, Gadchiroli,
through its In-Charge Officer,
S.P. Office Premises, Complex Area,
Gadchiroli, Dist. Gadchiroli.

6) Police Gas Agency, Gadchiroli, Run by
Police Welfare Branch, Gadchiroli,
through its In-charge,
Mr. Thakurdas Meshram (A.S.I.),
S.P. office Premises, Complex Area,
Gadchiroli, Dist. Gadchiroli.

Respondents

Shri S.Borkute, ld. Advocate for the applicant.

Shri V.A.Kulkarni, ld. P.O. for the Respondents.

Coram :- **Hon'ble Shri M.A.Lovekar, Member (J).**

JUDGMENT

Judgment is reserved on 09th March, 2022.

Judgment is pronounced on 06th April, 2022.

Heard Shri S.Borkute, ld. counsel for the applicant and Shri V.A.Kulkarni, ld. P.O. for the Respondents.

2. Facts leading to this application are as follows. In the year 2008 the applicant was transferred to Gadchiroli. He was holding the post of A.S.I.. He was incharge of gas agency run by respondent no. 5. He worked in this capacity till the year 2017. On 17.11.2017 he was transferred to Etapalli and is still working there. Respondent no. 5 started the gas agency in the year 1999. As per requirement of respondent no. 6 B.P.C.L. used to supply L.P.G. gas cylinders. There were no instructions in writing as to who was to bear loading and unloading charges of gas cylinders. Since the year 1999 these charges were being paid from out of the profits by respondent no. 6 and the incharge used to maintain separate expenditure vouchers. Such vouchers maintained by the applicant are collectively marked A-1. The incharge officers of Police Welfare gas agency at Chandrapur and Bhandara have been paying loading and unloading charges from out of the profits earned by the agency as can be seen from expenditure vouchers collectively marked A-2. In Income Tax Audit Report of 2011-2012 (F.Y.)/ 2012-2013 (A.Y.) at A-3 vouchers of expenditure incurred on loading and unloading of L.P.G. gas cylinders are mentioned which show that due procedure was

followed. On 28.12.2017 respondent no. 4 passed the order (A-4) directing recovery of Rs. 3,78,250/- from the applicant in 12 monthly instalments of Rs. 31,520/-. On 20.02.2018 respondent no. 4 partially modified the order dated 28.12.2017 and directed recovery of the amount in 19 monthly instalments of Rs. 20,000/-. Orders dated 28.12.2017 and 28.02.2018 are collectively marked A-4. On 28.12.2017 respondent no. 4 issued a show cause notice (A-5) to the applicant calling upon him to explain within seven days as to why punishment of stoppage of three annual increments be not imposed on him. The notice alleged financial misconduct committed by him by paying loading and unloading charges from out of the profits earned by the agency. The notice further alleged that from one Shri Ravindra the applicant had accepted Rs. 1500/- as charges for transfer of gas connection in the name of his wife but had not issued receipt to him. To this notice the applicant gave reply (A-6) on the same day. He answered the first charge by saying that there were no written instructions as to who was to bear loading and unloading charges, he had followed the practice which was being followed since inception of the agency, he had maintained the record of these payments which were also reflected in the Audit Report. He answered the second charge by saying that he had prepared the receipt for Rs. 1500/- but it was not collected by Shri Ravindra, and entry of this amount was duly taken in cashbook as reflected in the extract at A-7. On 21.05.2018 respondent no. 4 passed the order (A-8) withholding one increment of the applicant for one year. While passing this order reply of the applicant was not considered at all. On 22.06.2018 the applicant filed appeal (A-9) challenging the order dated 21.05.2018, before respondent no. 3. Respondent no. 3 dismissed the appeal by order dated 01.01.2019 (A-10). The applicant challenged the order dated 01.01.2019 by filing appeal (A-11) before respondent no. 2 who dismissed it by order dated 26.12.2019 (A-12). Against the order at A-4 the applicant filed

representation (A-13). Said representation of the applicant is yet to be decided. On 29.05.2018 the applicant submitted application (A-14) before respondent no. 4 for recall of order dated 28.12.2017 (A-4) to which he received the reply (A-15) that decision on his application (A-14) would be taken after receipt of Audit Report. This decision is yet to be taken by respondent no. 4. As per order dated 20.02.2018 (A-4) amount of Rs. 3,78,250/- has been recovered from the applicant as reflected in payslip at A-16.

3. According to the applicant the order dated 28.12.2017 (A-4) cannot be sustained because it was not preceded by notice which would have enabled the applicant to defend himself and refute the charges levelled against him. On facts, contentions of the applicant are that there were no written instructions as to who was to bear loading and unloading charges, practice has been followed since long to pay loading and unloading charges from out of the profits earned by the agency, this practice is being followed not only at Gadchiroli but also at Chandrapur and Bhandara, expenditure vouchers were duly maintained, these featured in Income Tax Audit Report for the year in question and hence neither the order of recovery nor the order of withholding one increment could be sustained.

4. By setting up the case as above the applicant prays that the order at A-4, A-8, A-10 and A-12 be quashed and set aside.

5. Reply of respondent nos. 4 to 6 is at pages 99 to 103. Relevant portion of this reply is as under:-

> "*Therefore, on 18.12.2017 the applicant was called to the office of the respondent no. 4 in the light of the complaint received against him. The applicant admitted that he had dishonestly accepted the amount of Rs. 1500/- from Shri*

Atiulwar and in addition to this upon instructed to return the said amount the applicant had returned the same to Shri Aitulwar.

It was obligatory on the part of the applicant to consult his senior in the matter making payment of charges for loading and unloading gas cylinders.

As per the contract signed between Police Gas Agency Gadchiroli and the Transport Company the cost of loading and unloading gas cylinders was to be borne by the Transport Company. Despite knowing this fact, the applicant deliberately spent a big amount of money from the profit fund of Police Gas Agency towards paying the loading and unloading charges. Thus the applicant has deliberately caused loss of profit to Police Gas Agency, Gadchiroli to the tune of Rs. 3,78,250/- for the reason best known to the applicant."

6. Reply of respondent no. 2 is at pages 104 to 108. Relevant portion of this reply is as under :-

"*It is pertinent to mention here that, the order dated 28.12.2017 is not a punishment order, but it is order of recovery caused to the Police Gas Agency of Gadchiroli, run as Police Welfare Scheme, because of conduct of the applicant. Whereas, the punishment imposed upon the applicant by following due procedure laid down as per Rule 4 (2) of the Maharashtra Police (Punishment and Appeals) Rules 1956 for the undisciplined act of the applicant noticed while handling Police Gas Agency. Hence on this count also the original application deserves to be dismissed.*"

7. Rejoinder of the applicant is at pages 109 to 112 in which the applicant has reiterated the grounds taken in the O.A.. Regarding attachments to the Rejoinder the applicant has stated :-

> "*The respondent no. 6 is paying labour charges from profit of agency and also maintaining record and taken entry in cash book about said expenditure like me. The copy of letter dated 11.12.2020 is annexed herewith and marked as Annexure-A-I. The copy of cash receipt extract is also annexed herewith as Annexure-A-II.*"

Contents of A-1 and A-2 support what is stated about them in the Rejoinder.

8. Two proceedings were parallely initiated against the applicant on 28.12.2017 - one for recovery of Rs. 3,78,250/- and the other for imposing punishment of stoppage of increments. According to the respondents, the proceedings for recovery of Rs. 3,78,250/- were not punitive in nature and hence, issuing a show cause notice before initiating the same was not necessary whereas the proceedings for imposing punishment of stoppage of increments were punitive in nature which mandated issuing of a show cause notice before initiating the same, such show cause notice was given to the applicant, he submitted a reply which was taken into account and only thereafter punishment of stoppage of one increment was imposed. According to the respondents, thus, there was no procedural lapse while imposing the punishment and for these reasons no relief can be granted to the applicant.

9. Specific contention of the applicant is that the order of recovery of amount was also punitive in nature, therefore, it could not have been passed without issuing a show cause notice and affording opportunity to the applicant to defend himself and this glaring lapse will

vitiate the order of recovery of amount. So far as the order imposing punishment of stoppage of one increment is concerned, specific contention of the applicant is that the authorities, while passing and confirming this order did not consider submissions made and the documents relied upon by the applicant and hence order imposing punishment of stoppage of one increment also needs to be quashed and set aside. I have adverted to the ground on which defence of the applicant that his conduct was blameless is founded.

10. In view of rival contentions Rule 3 (2) and Rule 4 (2) of the Bombay Police (Punishment and Appeal) Rules, 1956 need to be considered which read as under :-

> "*Rule 3 (2) The following punishment may also be imposed upon any Police Officer if he is guilty of any breach of discipline or misconduct or of any act rendering him unfit for the discharge of his duty which does not require his suspension or dismissal or removal:-*
>
> *(i) Caution.*
>
> *(ii) A reprimand (to be entered in the service book).*
>
> *(iii) Extra dill.*
>
> *(iv) Fine not exceeding one month's pay.*
>
> *(v) Stoppage of increments.*
>
> *(vi) Recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of orders.*
>
> *Provided that-*

(a) the punishment specified in clause (iii) shall not be imposed upon any officer above the rank of constable;

(b) the punishment referred to in clause (iv) shall not be imposed upon an inspector.

Explanation-for the purposes of this rule,-

(1) A police officer officiating in a higher rank at the time of the commission of the default for which he is to be punished, shall be treated as belonging to that higher rank;

(2) The reversion of a Police Officer from a higher post held by him in an officiating capacity to his substantive post does not amount to reductions;

(3) The discharge of a probationer, whether during or at the end of the period of probation, on grounds arising out of the specific conditions laid down by the appointing authority e.g. want of vacancy, failure to acquire prescribed special qualifications or to pass prescribed tests, does not amount to removal or dismissal.

Rule 4 (2) Without prejudice to the foregoing provisions, no order imposing the penalty specified in clauses (i), (ii), (iv) (v) and (vi) of sub-rule (2) of rule 3 on any Police Officer shall be passed unless he has been given an adequate opportunity of making any representation that he may desire to make, and such representation, if any, has been taken into consideration before the order is passed:

Provided that, the requirements of this sub-rule may, for sufficient reasons to be recorded in writing, be waived where there is difficulty in observing them and where they can be waived without injustice to the officer concerned.

Note:-The full procedure prescribed for holding departmental enquiry before passing an order of removal need not be followed in the case of a probationer discharged in the circumstances described in paragraph (4) of the explanation to rule 3. In such cases, it will be sufficient if the probationer is given an opportunity to show cause in writing against his discharge after being apprised of the grounds on which it is proposed to discharge him and his reply (if any) is duly considered before orders are passed. "

Rule 3 (2) provides *Inter alia* for imposing punishment of stoppage of increment under sub clause (v), as well as punishment of recovery from pay of the whole part of any pecuniary loss caused to Government by negligence or breach of orders under Clause (vi).

11. Having regard to the aforequoted Rules, submission of the respondents that the proceeding initiated for recovery of amount was not punitive in nature and hence prior show cause notice was not needed, cannot be accepted. It is not the case of the respondents that prior show cause notice was issued to the applicant before initiating the proceedings for recovery of amount. Record of the case clearly shows that the impugned order for recovery of amount was passed without giving an opportunity to the applicant to put forth his defence so as to meet the charges/ allegations levelled against him. The only Rule which enabled the authority to pass such order of recovery of amount is Rule 3 (2) (vi). Such order, therefore, could not have been passed without

complying with the precondition of giving an opportunity for making representation and considering the same before passing the order. It is settled position of law that if law prescribes a particular mode to do a particular act, that act should be done in the prescribed mode or not at all.

12. It is a matter of record that the applicant submitted application (A-14) before respondent no. 4 on 29.05.2018 to recall the order or recovery of amount (A-4) and respondent no. 4 replied vide A-15 dated 28.08.2018 that said application would be considered after receipt of audit report. Record further shows that the applicant made a representation (A-13) to respondent no. 3 to stop further recovery and direct refund of recovered amount. Specific assertion of the applicant is that neither the representation (A-13) nor the application (A-14) has been decided by respondent nos. 3 & 4, respectively. This has not been controverted by the respondents. Besides, respondent no. 3 appears to have taken no steps for obtaining the audit report referred to in A-15. The applicant filed instant O.A. on 16.03.2020 i.e. after waiting for more than a year and a half for decision on his application and representation by respondent nos. 4 and 3, respectively. He could not be expected to wait indefinitely considering the date of his superannuation which was not far away as stated in his application (A-14) submitted before respondent no. 4. For all these reasons the proceeding/ order for recovery of amount (A-4) deserves to be quashed and set aside.

13. Now, it remains to be determined whether the order imposing and confirming punishment of stoppage of one increment passed by respondent nos. 4, 3 & 2 (A-8, A-10, A-12 respectively) requires interference. This punishment was imposed under Rule 3 (2) (v). This was preceded by a show cause notice (A-5) to which the applicant gave reply (A-6). After considering said reply order (A-8) was

passed. Thus there were due compliance of Rule 4 (2). The Appellate authorities viz respondent nos. 3 & 2, passed reasoned orders (A-8, A-10 respectively) while confirming the order of imposition of punishment. Considering limited scope of judicial review no interference would be called for in the orders of imposing and confirming the punishment of stoppage of one increment. In support of this conclusion reliance may be placed on the following observations in "**B.C. Chaturvedi Vs. Union of India & Ors. on 1st November, 1995**":-

> *"The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H.C. Goel [(1964) 4 SCR 781], this Court held at page 728 that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.*
>
> *In Union of India & Ors. v. S.L. Abbas [(1993) 4 SCC 357], when the order of transfer was interfered by the Tribunal, this Court held that the Tribunal was not an appellate authority which could substitute its own judgment to that bona fide order of transfer. The Tribunal could not, in such circumstances, interfere with orders of transfer of a Government servant. In Administrator of Dadra & Nagar Haveli v. H.P. Vora [(1993) Supp. 1 SCC 551], it was*

held that the Administrative Tribunal was not an appellate authority and it could not substitute the role of authorities to clear the efficiency bar of a public servant. Recently, in State bank of India & Ors. v. Samarendra Kishore Endow & Anr. [J] (1994) 1 SC 217], a Bench of this Court to which two of us (B.P. Jeevan Reddy & B.L. Hansaria, JJ.) were members, considered the order of the Tribunal, which quashed the charges as based on no evidence, went in detail into the question as to whether the Tribunal had power to appreciate the evidence while exercising power of judicial review and held that a Tribunal could not appreciate the evidence and substitute its own conclusion to that of the disciplinary authority. It would, therefore, be clear that the Tribunal cannot embark upon appreciation of evidence to substitute its own findings of fact to that of a disciplinary/appellate authority."

14. For the reasons discussed hereinabove the application deserves to be partly allowed. Hence, the order:-

O R D E R

1. Order directing recovery (A-4) of Rs. 3,78,250/- from the applicant passed by respondent no. 4 is quashed and set aside.

2. The recovered amount shall be refunded to the applicant **within six weeks** from the date of receipt of this order.

3. Orders imposing and confirming punishment of stoppage of one increment passed by respondent nos. 4, 3 & 2 (A-8, A-10 & A-12, respectively) are maintained.

4. There shall, however, be no order as to costs.

(Shri M.A.Lovekar)
Member (J)

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

Name of Steno	:	Akhilesh Parasnath Srivastava.
Court Name	:	Court of Hon'ble Member (J).
Judgment signed on and pronounced on	:	06/04/2022.
Uploaded on	:	07/04/2022.