

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 249 of 2016 (DB)

Dr. Suresh S/o Gulabchand Agrawal,
Aged about 62 years, Occ. Ex Government Servant,
r/o Deep Colony Ward no.17,
At post and Taluka Morshi,
District Amravati.

Applicant.

Versus

1) The State of Maharashtra,
through its Secretary,
Agriculture Animal Husbandry,
Dairy Development and Fisheries Department
having its office at Mantralaya, Mumbai-400 032.

Respondents.

Shri S.P. Palshikar, Advocate for the applicant.

Shri H.K. Pande, P.O. for the respondent.

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

JUDGMENT

Per : Anand Karanjkar : Member (J).

(Delivered on this 16th day of April,2019)

Heard Shri S.P. Palshikar, learned counsel for the
applicant and Shri H.K. Pande, learned P.O. for the respondent.

2. The applicant is challenging the punishment of dismissal awarded to him after the departmental inquiry. The facts in brief are as under :-

3. The applicant was appointed as Livestock Development Officer in the year 1982. During his service tenure the applicant was transferred to various places. In the year 1989 the applicant was serving as Livestock Development Officer at Veterinary Dispensary, Panchayat Samiti, Nandgaon Khandeshwar, District Amravati. There was storm due to which electric wire was broken, due which one cow, calf and one bullock died due to electric shock. The post mortem examination of the dead animals was performed by the applicant.

4. One Ramdas Sadashiv Tambaskar lodged complaint in the office of Anti Corruption Bureau (ACB) informing that the applicant demanded illegal gratification Rs.200/- for issuing post mortem report, from him and from one Devidas Khadse, but later on the applicant agreed to issue the post mortem certificate after receiving Rs.100/- from each. On the basis of this information, trap was arranged and as per the direction of the applicant the money was handed over by Ramdas Tambaskar to one Suresh Bhitkar and thereafter on the basis of investigation charge sheet was filed against the applicant. The applicant was acquitted by the Special Judge, the appeal was preferred in the Hon'ble High Court, but it was dismissed.

5. It is grievance of the applicant that though he was honourably acquitted by the Special Judge and it was confirmed by the Hon'ble High Court, the Disciplinary Authority initiated the departmental inquiry. The applicant appeared before the Inquiry Officer, he submitted reply to the charge sheet and participated and challenged the evidence of the witnesses examined in the inquiry. It is contended that in absence of any evidence the Inquiry Officer mechanically held that the misconduct of the applicant was proved, the applicant demanded illegal gratification. It is submitted that the procedure followed by the Inquiry Officer and the Disciplinary Authority was apparently contrary to law. It is submitted that the Disciplinary Authority issued show cause notice to the applicant why he should not be dismissed from the service, the applicant submitted the reply, but without hearing the submissions of the applicant the Disciplinary Authority straight way dismissed the applicant from the service.

6. It is contended that the applicant preferred the appeal as provided under the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979, but it was mechanically dismissed without application of mind. In this background, it is submission of the applicant that the punishment of dismissal is illegal, it be set aside and notionally the applicant be reinstated in service from 22/02/2008 till 30/06/2011.

7. The respondents have submitted reply which is at page no.116 of the P.B. It is submission of the respondent no.1 that though the applicant was acquitted by the Special Judge and the Hon'ble High Court, but as the standard of proof was altogether different, consequently there was acquittal. It is contended that as per the rules the Disciplinary Authority decided to proceed against the applicant for the misconduct, consequently the charge sheet was served on the applicant, he was given opportunity to submit the reply, the Inquiry Officer was appointed. It is submitted that the Inquiry Officer conducted the inquiry as per the rules, opportunity to defend and participate in the inquiry was given to the applicant and after hearing the applicant, the Inquiry Officer came to the conclusion that the misconduct of the applicant was proved. It is submitted that during the inquiry, material witnesses were examined, who specifically deposed that the applicant demanded illegal gratification and even in presence of the Panch as per direction of the applicant the amount was handed over to Shri Bhitkar. According to the respondent no.1, this evidence was sufficient to prove the misconduct. It is contended that as the findings recorded by the Inquiry Officer are based on reasonable evidence, therefore, there is no infirmity in the findings recorded by the Inquiry Officer.

8. It is submission of the respondent no.1 that opportunity of hearing was given by the Disciplinary Authority to the applicant and after hearing the applicant the Disciplinary Authority awarded the punishment. According to the respondent no.1 in view of the nature of the misconduct the punishment of dismissal was proportionate and therefore, there is no reason to interfere in this matter.

9. We have heard oral submissions on behalf of the applicant and on behalf of the respondents. So far as the facts of the case are concerned, there was Anti Corruption trap on the basis of the complaint lodge by Ramdas, the applicant demanded and accepted the bribe and in pursuance of the trap, the applicant was prosecuted in Special Case No.11/1991, the applicant was acquitted by the Special Judge and later on the appeal filed by the State came to be dismissed by the Hon'ble High Court. There is no dispute about these facts. The material question arises whether the inquiry conducted was fair and as per the principles of natural justice and whether the conclusions drawn by the Inquiry Officer are based on evidence. It is contention of the applicant that there was no evidence at all to reach to the inference that the applicant was guilty of the misconduct. It is submitted that the conclusions drawn by the Inquiry Officer are based on contradictory evidence. The Inquiry Officer did not consider that Ramdas Tambaskar who lodged the complaint in

ACB office, was not owner of the cow & calf and the second submission is that the owner of the cow was not examined, there was no evidence that owner of the cow had authorised Ramdas Tambaskar to lodge the report in the office of ACB. It is also contended that the another owner of the dead animal had not authorised Ramdas Tambaskar to lodge the report, therefore, the nature of the evidence adduced before the Inquiry Officer was very doubtful and that evidence had no potential to form a view that misconduct was committed by the applicant. It is submitted that the Inquiry Officer mechanically placed reliance on the evidence adduced in the inquiry, consequently the findings recorded by the Inquiry Officer are perverse.

10. It is also contended on behalf of the applicant that the Disciplinary Authority did not consider the submissions of the applicant and mechanically placed reliance on the conclusion drawn by the Inquiry Officer and awarded the punishment. It is also contended that the Appellate Authority without assigning any reason dismissed the appeal. In view of this, it is contended that in absence of evidence the findings drawn by the Inquiry Officer cannot be justified and on such findings punishment of dismissal cannot be awarded, therefore, by allowing this application the order passed by

the Disciplinary Authority dismissing the applicant from the service be set aside and all consequential reliefs be granted to the applicant.

11. The legal position is very much settled that the scope of the judicial review is very limited and the Court or Tribunal can interfere in such matter only when the findings recorded by the Inquiry Officer are not based on any evidence or the findings are perverse or contrary to the law. In normal situation the Court or Tribunal do not have jurisdiction to re-appreciate the evidence adduced in the inquiry and to draw its own conclusions.

12. In the present matter as it is contention of the applicant that there was no evidence at all in support of the conclusions drawn by the Inquiry Officer, therefore, direction was given to the learned P.O. to produce the record of the inquiry. The learned P.O. has produced the record of evidence which is at page no.128 and onwards. It seems that during the inquiry statement of Ramdas Tambaskar was recorded. Ramdas Tambaskar deposed before the Inquiry Officer that on the relevant date there was storm, the electric wires were broken due to which one cow, calf and bullock died due to electric shock. The cow was owned by father of Ramdas Tambaskar and the bullock was owned by one Devidas Khadse. There was post mortem examination of the dead animals, Ramdas Tambaskar went to the office of the applicant who was then Livestock

Development Officer along with Devidas Khadse. It was informed by the applicant that Ramdas Tambaskar and Devidas Khadse will have to pay excess amount Rs.200/- each. Thereafter in the evening Ramdas Tambaskar and Devidas Khadse again visited house of the applicant, the applicant demanded amount Rs.200/- each. At that time Ramdas Tambaskar was not possessing that amount his father was out of station, thereafter Ramdas Tambaskar again visited the office of the applicant on the next day, he was asked whether amount was brought it was informed by Ramdas Tambaskar that it was not possible to pay that such amount and he informed that he will pay amount Rs.100/-. Thereafter the complaint was lodged by Ramdas Tambaskar in the office of ACB, trap was arranged, then in presence of Panch, Ramdas Tambaskar visited in the office of the applicant, the applicant asked Ramdas Tambaskar whether the amount was brought by him and the applicant told Ramdas to hand over the amount to one Suresh Bhitkar and accordingly Ramdas Tambaskar handed over that amount to Shri Bhitkar. Lateron signal was given to ACB Officers, they came there and amount was seized. After reading the cross examination of Ramdas Tambaskar, it seems that his material deposition was not challenged at all, his evidence was challenged only on the ground that though he was not owner of the cattle the report was lodged, but he stated that as directed by his father and Devidas Khadse, the report was lodged.

13. Devidas Khadse the owner of the Bullock was also aggrieved person and he was examined. Devidas Khadse also deposed that the applicant demanded amount Rs.200/- each for issuing post mortem report of the cattle. Devidas Khadse also deposed that on next day he visited in the office of the applicant with Ramdas Tambaskar, at that time also the applicant asked whether amount was brought and it was informed that it was not possible for them to pay such amount and they would pay each Rs.100/-. Devidas Khadse specifically stated that thereafter they contacted father of Ramdas Tambaskar, he was of the view not to pay amount to the applicant. Devidas Khase also decided not to pay the amount. Thereafter Devidas Khadse paid Rs.100/- to Ramdas Tambaskar and Ramdas Tambaskar went to Amravati. It is pertinent to note that this entire evidence of Devidas Khadse was not challenged in the cross examination before the Inquiry Officer. Panch witness Shri Mukund Wankhede was also examined and material witness Suresh Bhitkar who was serving in the office of the applicant was also examined. It has come in evidence of Shri Suresh Bhitkar that he was asked by the applicant to accept amount of Rs.200/- and therefore that amount was received by Suresh Bhitkar and thereafter ACB Officers came there and caught him. In the inquiry Shri S. Dabhade, ACP who was the head of the raiding party ACB was examined. Thus it seems that the inquiry was conducted by the Inquiry Officer as per the rules, all

material witnesses were examined, opportunity to cross examine the witnesses and participate in the inquiry was given to the applicant. In view of this material, it is not possible to accept that the inquiry was unfair or contrary to the principles of natural justice.

14. After reading the depositions of the witnesses examined before the Inquiry Officer it is very difficult to accept the contention that there was no evidence at all to establish that the illegal gratification was demanded by the applicant and as per the direction of the applicant Ramdas Tambaskar handed over amount of gratification to Suresh Bhitkar. In our opinion, this much evidence was sufficient for arriving to inference that the applicant took advantage of his official position to cause him wrongful gain and this was the misconduct. Once it is demonstrated that the findings recorded by the Inquiry Officer are based on cogent evidence then there is no scope to interfere in the matter.

15. We have already pointed out that from the facts and circumstances it is not possible to accept that inquiry was conducted violating the principles of natural justice or findings of the Inquiry Officer are not based on the evidence or the findings of the Inquiry Officer are perverse or contrary to law. In view of this discussion, there appears no merit in the contention of the applicant that the

Disciplinary Authority wrongly held that the applicant was guilty of the misconduct.

16. So far as the punishment awarded is concerned, the legal position is very much settled that the Government servant who is guilty of accepting illegal gratification should not be continued in Government service, therefore, it is not possible to accept that the punishment of dismissal is shockingly disproportionate. In the result, we hold that there is no substance in this application. Hence, the following order –

ORDER

The O.A. stands dismissed with no order as to costs.

(Anand Karanjkar)
Member(J).

(Shree Bhagwan)
Member (A).

Dated :- 16/04/2019.

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