

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 344 / 2022 (S.B.)**

Anil S/o Baburao Tambade,
Aged about 52 years, Occ. Service,
R/o C/o L.N.Luche, Kirtinagar,
Plot No. 19, Dighori, Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Skill Development and Entrepreneurship Department,
Mantralaya, Mumbai-400 032.
- 2) The Director,
Directorate of Vocational Education
and Training, 3, Mahapalika Marg,
Post Box No. 10036,
Mumbai, Maharashtra- 440 001.
- 3) The Joint Director,
Vocational Education and Training, Regional Office,
Civil Lines, Nagpur.

Respondents

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

Shri S.A.Sainis, Id. P.O. for the respondents.

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

JUDGMENT

Judgment is reserved on 30th June, 2022.

Judgment is pronounced on 11th July, 2022.

Heard Shri S.P.Palshikar, Id. counsel for the applicant and Shri S.A.Sainis, Id. P.O. for the Respondents.

2. Case of the applicant is as follows. The applicant was working as Senior Clerk in Industrial Training Institute, Mul, Chandrapur. On allegation of misconduct enquiry was initiated under Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 and a chargesheet (A-1) was served on him. The enquiry officer – by report dated 13.06.2019 (A-2) held the solitary charge to be proved. In response to the show cause notice dated 12.07.2019 (A-3) issued by the disciplinary authority the applicant submitted a reply/explanation dated 01.08.2019 (A-4). By order dated 19.03.2020 (A-5) respondent no. 3 imposed punishment of stoppage of (3) increments due on 01.07.2020, 01.07.2021 and 01.07.2022, permanently. On 31.07.2020 the applicant filed appeal (A-6) before respondent no. 2 against the order of imposition of punishment as above. Respondent no. 2, by order dated 08.11.2020 (A-7) rejected the appeal without considering the grounds raised by the applicant and without assigning reasons. Respondent no. 3 recorded and respondent no. 2 confirmed the findings which are contrary to record. The applicant had no role to play in signing of cheques. It was done by the Principal of the Institute. The applicant was not the Drawing and Disbursing Officer. No allegation of misappropriation of Government funds was levelled against the applicant. The amount alleged to have been wrongly paid was deposited by the recipient Shri K.N.Rawle (A-8). Thus, there was no loss to State Exchequer. The impugned punishment is shockingly disproportionate even assuming that the charge is proved. Report of preliminary enquiry dated 27.07.2017 (A-9) had indicted the then Principal Shri J.D.Gabhane and recipient of the amount Shri K.N.Rawle. For these reasons the orders

dated 19.03.2020 and 08.11.2021 passed by respondent nos. 3 & 2, respectively (A-5 & A-7) need to be quashed and set aside and direction needs to be issued to respondent no. 3 to refund the amount withheld by not releasing the increments by way of punishment, with interest. Hence, this application.

3. Against the applicant following charge was laid:-

“उक्त, श्री.ए.बी.तांबडे, मुख्यलिपिक, शासकीय तंत्र माध्यमिक शाळा केंद्र, गोंदिया हे तत्कालीन काळी दिनांक १४/०३/२००८ ते दिनांक २०/०६/२०१४ पर्यंतचे कालावधीत वरिष्ठ लिपिक, औ.प्र.संस्था, मुल, जि.चंद्रपूर या पदावर कार्यरत असतांना त्यांनी वर्ष २०१३ व वर्ष २०१४ या शैक्षणिक सत्रामध्ये IT Literacy व Employability Skill या विषयाच्या तासिका श्री.के.एन.रावळे, शिल्पनिर्देशक यांनी घेतल्याबाबतच्या कुठल्याही दस्ताऐवजाची पडताळणी न करता म्हणजेच श्री.के.एन. रावळे यांनी सदर विषयाच्या तासिका कोणत्या दिवशी, कोणत्या तारखेला व कोणत्या वेळेत घेतल्या याबाबतच्या कुठल्याही दस्ताऐवजाची पडताळणी न तपासता व तसे दस्ताऐवज संबंधिताकडून प्राप्त करून न घेता मानधनापोटी एकुण रक्कम रुपये ४५,१४४/- चे देयक क.६७, दि.३१/१०/२०१३ (रु.२१,१६८/-), देयक क.१२२, दि.२७/३/२०१४ (रु. १९,००८/-) आणि देयक क.१३५, दि.२९/३/२०१४ (रु.४८६८/-) चे देयके PROFESSIONAL SERVICES या उद्दिष्टाखाली तयार करून देयकांचे कार्यालयीन प्रतीवर प्राचार्यांची स्वाक्षरी न घेता कोषागारात सादर केले व रक्कम आहरीत करून श्री.के.एन.रावळे, शि.नि.यांना संगनमताने अदा केले.

उक्त बाबीवरून श्री.ए.बी.तांबडे, मुख्यलिपिक, शासकीय तंत्र माध्यमिक शाळा केंद्र, गोंदिया यांनी तत्कालीन काळी औ.प्र.संस्था, मुल येथील कर्तव्य कालावधीत सदर देयकाबाबत कार्यवाही करतांना कर्तव्यपराणता ठेवलेली नसून आर्थिक अनियमितता केल्याचे प्रथमदर्शनी स्पष्ट होते.”

While conducting the enquiry the enquiry officer held:-

“उक्त बाबीवरून श्री.ए.बी.तांबडे, मुख्यलिपिक, शासकीय तंत्र माध्यमिक शाळा केंद्र, गोंदिया यांनी तत्कालीन काळी औ.प्र.संस्था मुल येथील कर्तव्य कालावधीत सदर

देयकाबाबत कार्यवाही करतांना कर्तव्यपरायणता ठेवलेली नसुन आर्थिक अनियमितता केल्याचे प्रथमदर्शनी स्पष्ट होते” सिद्ध होत नाही.”

In his explanation dated 01.08.2019 (A-4) the applicant stated-

“सादर कर्ता अधिकारी यांनी सादर केलेल्या टाचणानुसारच चौकशी अधिकारी यांनी आपणास त्यांचे पत्र क्र.चौ.अ.आर.एस.के.१३०६१९, १७ २०१९-२० दिनांक १३/०६/२०१९ नुसार सादर केलेल्या चौकशी अहवालात देयक क्र.६७ दिनांक ३१.१०.२०१३ रक्कम रु.२११६८/- देयक क्रमांक १२२ दिनांक २७/०३/२०१४ रक्कम रुपये १९००८/- देयक क्रमांक १३५ दिनांक २९/०३/२०१४ रक्कम रुपये ४९६८/- या तिन्ही देयकांचे स्थळ प्रतिवर प्राचार्याची स्वाक्षरी न घेता फक्त मुळ प्रतिवरच स्वाक्षरी करून घेवून देयक कोषागारात सादर केल्याचे नमुद केलेले आहे. वास्तविक पाहता देयक क्र.६७ दिनांक ३१.१०.२०१३ रक्कम रु.२११६८/- या देयकावरच प्राचार्यांनी अनवधानाने स्वाक्षरी केली नसावी. या बाबीकडे पुर्णतया दुर्लक्ष करून मला दोषी ठरविण्याच्या उद्देशाने सादर अहवाल तयार करण्यात आलेला आहे, असे मला वाटते प्रत्यक्षात वा अप्रत्यक्षात श्री.रावळे यांचे आर्थिक बाबीत माझे काही संगनमत असण्याचा प्रश्नच उद्भवत नाही. कारण कोणतेही आर्थिक व्यवहार प्राचार्यांचे आदेशानुसार व निर्देशानुसार व त्यांचे अधिकार कक्षेत होत असतात.”

In his appeal memo (A-6) the applicant contended –

“१) कोषागार अधिकारी देयकावर आहरण व संवितरण अधिका-याची स्वाक्षरी असल्याशिवाय देयक पारीत करीत नाही हा सर्व साधारण नियम सर्वानाच माहित आहे. ज्याअर्थी आरोपात नमुद उपरोक्त तिन्ही देयके कोषागार अधिका-याने पारीत केलेले आहे त्याअर्थी प्राचार्य औ.प्र.संस्था मुल यांनी आहरण व संवितरण अधिकारी म्हणून उपरोक्त तिन्ही देयकावर स्वाक्षरी केलेली होती असे स्पष्ट होते. चौकशी अधिका-याने उपरोक्त तिन्ही देयकांच्या प्रती कोषागार अधिकारी कार्यालयातून मागविली नाही व चौकशीत त्याची प्रत्यक्ष पाहणी न करताच प्राचार्य औ.प्र.संस्था मुल यांची स्वाक्षरी न घेता देयके सादर केली असा नोंदविलेला निष्कर्ष हा वस्तुस्थितीदशर्क तथा सत्य ठरत नाही. अनावधानाने देयकाच्या कार्यालयीन प्रतीवर प्राचार्यांची स्वाक्षरी नाही म्हणून कोषागार कार्यालयात सादर केलेल्या मूळ देयकावर प्राचार्यांची स्वाक्षरी नाही असा समज करून त्यांनी चौकशी

अहवालात चुकीच निष्कर्ष नोदविलेला आहे. त्यामुळे चौकशी अहवाल हा वस्तुनिष्ठ ठरत नाही.”

On behalf of the applicant reliance was placed on the aforequoted portion of record to contend that the punishment ought not to have been imposed in the first place and assuming that the applicant was guilty of a minor procedural lapse, punishment commensurate therewith, and not such highly disproportionate punishment ought to have been inflicted.

4. Reply of the respondents is at pages 66 to 74. They have contended –

1. *The applicant while working as Senior Clerk at Industrial Training Institute, Mul, District Chandrapur had without checking the documents and bill which were furnished by one Shri Rawale, Instuctor for the classes taken for Information Technology Literacy and Employability skill of Rs. 45,144/- had committed a major mistake and prepared bogus bills.*

2. *It is also found that, the said bill was not having the abstract or details of the classes taken date wise.*

3. *According to the preliminary enquiry report submitted by a 3 member committee vide dated 27.07.2017 the applicant and other 2 were held responsible.*

4. *The say of the applicant that he had no role in matter of issuing cheque/s is wrong and false. He is responsible for preparing the bills with checking of documents and presenting*

it to the principal who is Drawing and Disbursing Officer of the Industrial Training Institute.

5. Though K.N.Rawale has deposited the amount of Rs. 45,144/- to Government, but that is not the case of loss of profit, but the act of committing financial irregularity while serving to Government which is against the M.C.S. (Discipline and Appeal) Rules, 1979”

5. The respondents have relied on explanation dated 25.09.2017 (A-R-1) given by the applicant in which he stated:-

“महोदय, प्राचार्यांचे अधिनस्त कर्मचारी हे त्यांचे निर्देशनानुसार कामे करित असतात, जर त्यांचे म्हणणे ऐकले नाही, तर आम्हाला त्यांच्या सुचनेचे पालन करित नाही म्हणुन त्यांच्या रोषाला सामोरे जावे लागते, म्हणून मला मार्च महिन्याच्या शेवटच्या दिवशी, बीडीएस वर दिलेल्या तरतुदी नुसार एम ई, कार्यालयीन खर्च, सामुग्री व पुरवठा तसेच कंत्राटी देयक व ईतर या उद्दिष्टाचे देयक बनवुन कोषागारात सादर करणे व ते पारीत करुन घेणे हे माझे कर्तव्य होते, म्हणुन त्यामुळे सदर देयकाविषयी जास्त चौकशी करण्यात आली नाही, सदर देयकाबाबत हि झालेली माझी चुक मी मान्य करित आहे.”

It was contended by Id. P.O. that by giving the explanation as above the applicant admitted the lapse committed by him and hence the impugned orders passed by respondent nos. 3 & 2 cannot be interfered with.

6. It was further submitted by Id. P.O. that while conducting the enquiry statutory rules and principles of natural justice were scrupulously followed and, therefore, this Tribunal, while exercising clearly circumscribed power of Judicial review, may not upset the impugned orders.

7. Main thrust of submissions made on behalf of the applicant is that the punishment imposed on the applicant is shockingly

disproportionate to the nature of lapse said to have committed by the applicant. In support of this contention it was pointed out –

- A. The applicant only prepared bills.
- B. Cheques were signed by the Principal of the Institute.
- C. The applicant did not obtain signature of the D.D.O. on office copy of bills.
- D. The applicant did not obtain details from Shri Rawle before preparing bills.
- E. The applicant was not charged with misappropriation of funds.
- F. The amount paid to Shri Rawle was refunded by him and thus there was no loss to State Exchequer.

6. On behalf of the applicant reliance is placed on **“B.C.Chaturvedi Vs. Union of India and Ors., AIR 1996, SC 484.”** wherein it is held:-

“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."

7. The enquiry officer held the charge to be proved. The disciplinary authority, respondent no. 3, concurred with his findings and imposed punishment of stoppage of three increments permanently. The appellate authority, respondent no. 2, declined to interfere. Since fact finding is the exclusive domain of the enquiry officer, disciplinary authority and appellate authority, question of upsetting their findings would not arise while exercising clearly circumscribed power of judicial review. However, considering the nature of proven lapse viz not obtaining signature of D.D.O. on office copy of bills and not obtaining necessary details from Shri Rawle before preparation of bills, the punishment imposed i.e. stoppage of three increments permanently, is clearly disproportionate. Hence, I have come to the conclusion that the impugned orders cannot be sustained since the matter is to be remanded to the disciplinary authority to impose punishment commensurate with the gravity of proven lapse of the applicant. Hence, the order:-

Application is allowed in the following terms:-

O R D E R

A. The impugned orders dated 19.03.2020 (A-5) and 08.11.2021 (A-7) imposing and confirming punishment, passed by respondent nos. 3 & 2, respectively are quashed and set aside and the matter is

remanded to the disciplinary authority to appropriately scale down and impose punishment commensurate with the gravity of proven lapse of the applicant.

B. No order as to costs.

Member (J)

Dated :-11/07/2022.

aps

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 : 11/07/2022.
and pronounced on

Uploaded on : 12/07/2022.