

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 382 of 2005 (D.B.)

Shri Sharad Vithalrao Bhopale,
aged about 47 years, r/o Udaya Colony, Sainagar,
Amravati, Distt. Amravati.

Applicant.

Versus

- 1) Government of Maharashtra, through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai-32.
- 2) Addl. Commissioner,
Aadivasi Vikas Vibhag Addl. Tribal Commissioner,
Vilasnagar Road, Amravati, Distt. Amravati.
- 3) Head Master,
Secondary Ashram School, Kutanga,
Tq. Dharni, Distt. Amravati.
- 4) Commissioner,
Tribal Development Deptt.
Trimbak Rd. Nasik.

Respondents.

**Smt. S.W. Deshpande, Shri A.P. Tathod, A.D. Girdekar, S. Thakre,
Advs. for applicant.**

Shri A.M. Khadatkhar, learned P.O. for respondents.

**Coram :- Hon'ble Shri Shree Bhagwan,
Vice-Chairman and
Hon'ble Shri Justice M.G. Giratkar,
Vice-Chairman.**

Date of Reserving for Judgment : 22nd August,2022.

Date of Pronouncement of Judgment : 30th August,2022.

JUDGMENT

(Delivered on this 30th day of August, 2022)

Per : Shri Justice M.G. Giratkar, Vice-Chairman.

Heard Smt. S.W. Deshpande, learned counsel for applicant and Shri A.M. Khadatkar, learned P.O. for respondents.

2. The case of the applicant in short is as under –

The applicant was working as a Head Master in Ashram School in the Tribal Department. The applicant while working as a Head Master in the Ashram School, Surwadi, Tq. Ashti, Dist. Beed, he has committed misconduct. The charge sheet was issued to the applicant. He was kept under suspension. The departmental inquiry was initiated against the applicant. The Inquiry Officer reported to the Additional Commissioner about the result of inquiry. The misconduct / charges against the applicant are proved. The show cause notice was issued to the applicant. The Additional Commissioner, Tribal Development Department, Amravati dismissed the applicant from service as per the order dated 21/10/2002 (Annex-L,P-48).

3. The applicant had filed appeal before the Commissioner, Tribal Development Department, Nashik (R/4). The said appeal was partly allowed. The punishment of dismissal was modified and the applicant was reverted on the post of Assistant Teacher as per the order dated 22/12/2004 (Annex-N,P-71).

4. It is the case of the applicant that Review Application was filed under Rule 25 (A) of the Maharashtra Civil Services Discipline & Appeal Rules, 1979, but it was not considered by the Commissioner, Tribal Development Department. It was informed that second appeal is not provided in the departmental inquiry rules. Hence, the present O.A. is for the following reliefs –

“(i) Under the above circumstances the order of reversion issued by respondent no.4, holding that, applicant is reverted to the post of Assistant Teacher dated 22/12/2004 at Annex-N and rejection of Review Application dated 29/03/2005 which is at Annex-P be quashed and set aside and be hold that, the applicant is exonerated with honour declaring the enquiry as vitiated enquiry on the ground that it was not properly conducted by the D.E. Officer. The appeal be allowed regularising the suspension period as duty and appeal be allowed in the interest of justice and equity.

(ii) The suspension period i.e. from 17/04/2000 till the retirement i.e. on 30/06/2015, be treated as Head Master since the applicant has actually worked as Head Master w.e.f. 04/07/2008 as per annexure A-Q and annexure A-R, with all consequential effects including interest on the receivable amount in the interest of justice.”

5. The O.A. is strongly opposed by the respondents. It is submitted that the applicant the then Secondary Head Master was suspended vide order dated 06/02/1996. That suspension was revoked and the applicant was reinstated as per the order dated 26/11/1998. When the applicant was serving as a Head Master at

Government Secondary Ashram School, Surwadi, Tq. Ashti, Dist. Beed he made embezzlement with regard to uniforms of students. Police case was filed against the applicant. The applicant was charge sheeted before the Criminal Court. The applicant was suspended vide order dated 17/04/2000. The departmental inquiry was initiated for following five charges against the applicant -

- (i) Asking the subordinates / employees to remain absent on duty and in consideration thereof demanding money of such absence.
- (ii) To draw the salary of employees despite their absence and resignation.
- (iii) Remained absent from duty.
- (iv) To keep the school stationary at his residence and not to teach the Students.
- (v) Make embezzlement of uniforms of Students.

6. It is submitted that the applicant denied the charges. As per the procedure, the Inquiry Officer was appointed. The opportunity was given to the applicant. The inquiry was fixed on 28/09/2001, 18/10/2001, 10/11/2001, 12/12/2001, 08/03/2002, 21/03/2002, 21/05/2002, 27/06/2002 and 12/07/2002. The applicant was present in the departmental inquiry on all the dates. The statements of witnesses were recorded. The statement of applicant was also recorded. The final report was submitted by the Inquiry Officer to the Project Officer/ authority. The show cause notice was given. After

considering the explanation to show cause notice, the Additional Commissioner dismissed the applicant from service.

7. The applicant preferred appeal and he is reinstated in service on the post of Assistant Teacher as per order passed by the Commissioner, Tribal Development Department. It is submitted that every opportunity was given to the applicant. There is no provision of review as per the departmental inquiry rules. Hence, the O.A. is liable to be dismissed.

8. Heard Smt. S.W. Deshpande, learned counsel for applicant. She has pointed out the copy of Review Application and submitted that as per the Rule 25 (A) of the Maharashtra Civil Services Discipline & Appeal Rules, 1979, the review application was filed. The respondent the Commissioner, Tribal Development Department not considered the same. The learned counsel for applicant has submitted that no opportunity was given to the applicant in the departmental inquiry. The charges are not proved. Hence, the punishment modified by the Commissioner, Tribal Development Department was not proper.

9. The applicant was deserved to be exonerated from all the charges and he should have been given posting to his original post, instead of reverting him on the post of Assistant Teacher.

10. The learned counsel for applicant has submitted that the suspension period of applicant is also liable to be treated as a duty period and arrears of all the payment shall be paid along with interest. In support of her submission pointed out decision in the case of (i) State of Kerala and others Vs. M. Padmanabhan Nair, AIR 1985 SCC,356 (ii) Padma Manwani Vs. State of Maharashtra & Ors., 2015 (4) Mh.L.J., 175.

11. Heard learned P.O. for respondents Shri A.M. Khadatkar. He has submitted that the applicant was placed under suspension for three times before the departmental inquiry. The applicant has committed serious misconduct and therefore the departmental inquiry was initiated. The applicant was caught while selling the uniform of the students. He was prosecuted by the Police. The applicant was present on all the dates before the Inquiry Officer. He never raised any objection about any opportunity. The Government Officers who made complaint against the applicant have supported the charges. Therefore, the Inquiry Officer submitted his report. The Disciplinary Authority, i.e., the Additional Commissioner has taken into consideration in details about the charges and explanation of the applicant and thereafter passed the order of dismissal from service. In the appeal, the Commissioner, Tribal Development Department modified the order of dismissal by partly allowing the appeal. The

applicant was reverted on the post of Assistant Teacher. At last submitted that the O.A. is without any merit and liable to be dismissed.

12. In respect of submission of learned counsel for applicant Smt. S.W. Deshpande about the relief no.2 for counting the suspension period as a duty period with all consequential effects including interest on receivable amount etc. In fact no provision is pointed out by learned counsel for applicant to grant such relief. She has pointed out above cited decisions which are not applicable to the case in hand.

13. As per the Rule 72 of the Maharashtra Civil Services (Joining time, Foreign Service and Payments During Suspension, Dismissal and Removal) Rules, 1981, it is discretion of the disciplinary / appointing authority to treat the suspension period as duty period. As per the Rule 72 of Rules,1981 it is for the authority to pass a specific order regarding the pay and allowances to be paid to the Govt. servant for the period of suspension. The relevant Rule 72 (a) and (b) is as under –

*“(a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement on superannuation, as the case may be; and
(b) whether or not the said period shall be treated as a period spent on duty.”*

14. As per the Rule 72 of Rules 1981, the disciplinary authority shall record its opinion that the action of the suspension was “**wholly unjustified**”. As per the Judgment of Hon’ble Apex Court in the case of **Krishnakant Raghunath Bibhavnekar Vs. State of Maharashtra & Ors. (1997) 3 SCC,636**, It is held as under –

“ Legal evidence may be insufficient to bring home the guilt beyond doubt. The act of reinstatement sends ripples among the people in the office/locality and sows wrong signals for degeneration of morality, integrity and rightful conduct and efficient performance of public duty. The constitutional animation of public faith and credit given to public acts would be undermined. Every act or the conduct of a public servant should be to effectuate the public purpose and constitutional objective. Public servant renders himself accountable to the public. If the alleged conduct is the foundation for prosecution, grant of consequential benefits with all back wages etc. cannot be as a matter of course, even if the employee may have been acquitted on appreciation or lack of sufficient evidence. It would be deleterious to the maintenance of the discipline if a person who was suspended on valid considerations is given full back wages as a matter of course, on his acquittal. The disciplinary authority has option either to enquire into the misconduct unless, the self-same conduct was subject matter of the charge and on trial the acquittal was not based on benefit of doubt but on a positive finding that the accused did not commit the offence at all. The authority may also, on reinstatement, pass appropriate order including treating suspension period as not spent on duty, after following the principles of natural justice.

Rule 72 gives a discretion to the disciplinary authority. The appellant is not entitled to consequential benefits on his reinstatement after acquittal. He is also not entitled to be treated as on duty from the date of suspension

till the date of acquittal, for the purpose of computation of pensionary benefits etc.”

15. This Tribunal cannot direct the authority to treat the suspension period as duty period. The Hon'ble Supreme Court in case in the case of **Vasant Krushnaji Kamble Vs. State of Maharashtra & Ano., 2003 (4) Mh.L.J.,606** has held that that “the acquittal of the petitioner by a criminal Court, did not ipso facto entitle him to the benefits of Salary under Rule 72. What was required to be seen was whether in the opinion of the competent authority, the action of suspension of the petitioner was "wholly unjustified". In other words, a negative test has to be applied for holding the person to be entitled to all benefits of period of suspension and that period should be treated as if the delinquent was on duty”.

16. In view of the Judgments of Hon'ble Supreme Court and Bombay High Court, this Tribunal cannot grant relief as prayed by the applicant in respect of treating the suspension period from 17/04/2000 till retirement i.e. on 30/06/2015 as duty period as Head Master.

17. In respect of quashing and setting aside the order of punishment, from the perusal of record / order of the Additional Commissioner clearly shows that the applicant was given opportunity in the departmental inquiry. Serious charges were levelled against the applicant. The reporting authorities (complainants) supported the

charges. The show cause notice was given to the applicant. After perusal of the explanation, the Additional Commissioner passed the order of dismissal from service.

18. The order of the Additional Commissioner dismissing the applicant from service, dated 21/10/2002 was challenged before the Commissioner, Tribal Development Department. In the appeal, under Section 17 of Maharashtra Civil Services (Discipline & Appeal) Rules, 1981, the said appeal was partly allowed and order of punishment was modified, instead of dismissal, the applicant was reverted on the post of Assistant Teacher.

19. Looking to the charges levelled against the applicant, the order passed by the Commissioner, Tribal Development Department appears to be legal and proper.

20. The learned counsel for applicant has pointed out Review Application filed under Rule 25 (A) of the Maharashtra Civil Services Discipline & Appeal Rules, 1979 and submitted that the Commissioner, Tribal Development Department not heard the applicant. It was informed to the applicant that there is no provision of review in the departmental inquiry as per rule no. 8.16 (P-80). The learned counsel for applicant not pointed out any rules in the departmental inquiry rules about the review.

21. From the perusal of the Rule 25 (A) of the Maharashtra Civil Services Discipline & Appeal Rules, 1979, the power of review is vested with the Governor. From the perusal of review application, the said application was filed before the Commissioner of Tribal Development Department. The Rule 25 (A) of the Maharashtra Civil Services Discipline & Appeal Rules, 1979 reads as under –

“25-A Review – The Governor may, at any time, either on his own motion or otherwise, review any order passed under these rules, when any new material or evidence which could not be produced or was not available at the time of passing the order under review and which has the effect of changing the nature of the case, has come or has been brought, to his notice ;

Provided that, no order imposing or enhancing any penalty shall be made by the Governor unless the Government servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed, or where it is proposed to impose any of the major penalties specified in Rule 5 or to enhance the minor penalty imposed by the order sought to be reviewed to any of the major penalties and if an inquiry under Rule 8 has not already been held in the case, no such penalty shall be imposed except after an inquiry in the manner laid down in Rule 8, subject to the provision of Rule 13, and except after consultation with the Commission where such consultation is necessary.”

22. The learned counsel for applicant has pointed out that in the year 2007 and 2014, the Tribal Development Department appreciated the work of the applicant. The work of applicant as Assistant Teacher after passing the order in the departmental inquiry cannot be taken into consideration. As per Rule 25 (A) of the Maharashtra Civil Services Discipline & Appeal Rules, 1979, the

power of review is vested with the Governor and not with the Commissioner. The review application shows that it was addressed to the Commissioner, Tribal Development Department and therefore the review application itself was not tenable. Moreover, nothing is pointed out to show that any new material or evidence could not be produced or was not available at the time of passing the order under the review which has the effect of changing the nature of the case. Hence, the review application itself was not maintainable. As pointed out in the communication dated 29/03/2005 (P-80), there is no provision in the departmental inquiry rule no.8.16. Once the decision is given by the Appellate Authority, there is no provision of another appeal / review. The power of review under Rule 25 (A) of the Maharashtra Civil Services Discipline & Appeal Rules, 1979, is vested with the Governor and not with the Commissioner of Tribal Development Department. Hence, there is no merit in the present O.A., therefore, we pass the following order –

ORDER

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

(Justice M.G. Giratkar)
Vice-Chairman

(Shree Bhagwan)
Vice- Chairman

Dated :- 30/08/2022.

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 Vice Chairman.

Judgment signed on : 30/08/2022.

Uploaded on : 30/08/2022.