

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 606 of 2013 (D.B.)

- 1) Smt. Takshasheela wd/o Anandkar Meshram,
Aged about 45 years, Occ. Nil,
R/o Plot No.89, New Town, Butibori, Nagpur
(As sole Guardian).
- 2) Ms. Anmol Anandkar Meshram,
Aged about 23 years, Occ. Nil,
R/o Plot No.89, New Town, Butibori,
Nagpur.
- 3) Mr. Ajitkar Anandkar Meshram,
Aged about 29 years, Occ. Nil,
R/o Plot No.89, New Town, Butibori,
Nagpur.
- 4) Mr. Bhagesh Anandkar Meshram,
Aged about 16 years, Occ. Nil
R/o Plot No.89, New Town, Butibori,
Nagpur.

(Original Applicant) Anandkar S/o Madhukar Meshram

Applicants.

Versus

- 1) State of Maharashtra,
Public Health Department,
Mantralaya, Mumbai-32.
through its Secretary.
- 2) The Employees State Insurance Scheme,
Panchdeep Bhawan, 6th floor,
N.M. Joshi Marg, Lower Parel,
Mumbai-13.
through its Commissioner / Director
- 3) The Employees State Insurance Scheme,
Vidarbha Region, Opp. Isolation Hospital,
Imambada, Nagpur-400 003
through its Administrative Medical Officer.

Respondents.

**S/Shri P.C. & P.V. Marpakwar, P.V. Joshi, S.M. Khan, Advs. for
the applicants.**

Shri A.M.Khadatkar, P.O. for the respondents.

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

JUDGMENT

Per : Member (A).

(Delivered on this 22nd day of February,2019)

Heard Shri S.M.Khan, learned counsel for the applicants
and Shri A.M. Khadatkar, learned P.O. for the respondents.

2. In this O.A. the learned counsel for the applicant
submitted that applicant passed the SSC examination in 1984, his
father late Shri Madhukar Pandurang Meshram was working with the
respondent no.2, Employee State Insurance Scheme as a Dresser.
Shri Madhukar Pandurang Meshram expired while in service on
13/05/1984, therefore, as per the scheme the applicant was
appointed on 30/09/1989 as a Class-IV employee and was posted to
work at Akola. On 09/08/1994 the applicant was transferred to
Nagpur as a Class-IV employee, his entire service record was clean
and excellent. The applicant was granted higher pay scale as per the
Scheme framed by the Government of Maharashtra (ACP).

3. After posting at Nagpur, the applicant was posted at Service Dispensary at Bajeria. The said dispensary was shifted to Butibori. The applicant was also shifted to Butibori and continued to work till the date of his retirement.

4. While in the employment of the respondents, the applicant was served with a charge sheet under Rule 8 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. Along with the charge sheet vide letter No. C&4@J@f@Hkxh; p&l'kh @vkee@4523] dated 17/06/2011 (Annex-A-3, P-29) along with statement of allegations, list of documents and list of witnesses. Thereafter, one Shri N.D. Malode was appointed as an Inquiry Officer and Dr. Vijaypal Sontakke was appointed as Presenting Officer. It is contention of the applicant the inquiry was conducted with undue haste, principles of natural justice were not followed, reasonable opportunity was not given to the applicant to defend him. It is contended that though it was informed that the applicant was sick the witnesses were examined in the back of the applicant. The applicant was not given opportunity to examine the witnesses. The Inquiry Officer relied upon extraneous material. It is further stated that while the charge sheet contains only 2 charges, but the Inquiry Officer submitted report in respect of 6 charges by dividing the charges in several sub-charges.

5. The learned counsel for the applicant further submitted that the inquiry report is therefore illegal and suffers from non-application of mind. The applicant submitted his reply to the inquiry report, but ignoring all the contention of the applicant disciplinary authority passed an order on 30/03/2012 for compulsory retirement of the applicant from 31/03/2012. The applicant submitted an appeal to the Appellate Authority. However, the said appeal was dismissed vide order dated 23/02/2013 in a mechanical manner. Being aggrieved by the said order the applicant has filed this O.A.

6. The respondent nos. 1 to 3 have filed reply-affidavit and resisted the claim made by the applicant. The respondents have denied that the inquiry was conducted in haste and opportunity of hearing was not given to the applicant. It is contended that the service record was not good, the applicant behaved disorderly while on duty, the applicant after consumption of liquor abused the medical officer in filthy language and damaged the Government property. The applicant had threatened to commit suicide for his transfer. The incharge medical officer at ESI Dispensary, Kamptee sent a written complaint to Police Station Officer, Kamptee. The applicant was arrested under IPC 214 and 427. As the applicant gave threat of self immolation in order to maintain law and order Police Inspector Kamptee Police Station put him under custody and informed the

same to the Medical Officer I/c ESI Dispensary Kamptee. After the above incidence the applicant was transferred and posted as Class-IV servant at ESI Dispensary, Bajeria, Nagpur.

7. The charge sheet of the D.E. letter No.4523 dated 17/06/2011 was sent by respondent no.3 in a sealed envelop, but the applicant refused to accept the same. In this regard medical Officer I/C ESI Disp. Butibori and the Sr. Clerk of ESI Disp. Butibori informed to the respondent no.3 regarding refusal of accepting the charge sheet. The same sealed envelope was later on sent on 6/7/2011 by special messenger. That time also the applicant refused to accept the letter. Since the applicant refused to accept the sealed envelope containing charge sheet, same was sent by registered post A.D. on 7/7/2011 and it was accepted by the applicant.

8. The respondents denied that the Administrative Medical Officer harassed the applicant. It is submitted that all documents demanded by the applicant were provided to him and full opportunity was given to the applicant to defend him in the inquiry. It is contended that the report of the inquiry officer is based on evidence, the report was served on the applicant and after hearing the applicant on the point of punishment final order was passed in the D.E., therefore, there is no illegality in it.

9. As per para-24 of reply it is submitted that the Appellate Authority has fixed the case for hearing on 10/10/2012 and on the same day the applicant along with other witnesses were present before the Appellate Authority, however, on the same day i.e. 10/10/2012 the applicant was granted opportunity for personal hearing and thereafter the matter was fixed on 23/11/2012 and later on once again dated 23/01/2013. The applicant was granted an opportunity of personal hearing by the Appellate Authority. Similarly he was given one more chance to submit his written say on the above mentioned matter accordingly the applicant submitted his written say on dated 12/02/2013 to respondent no.2 through respondent no.3. That during the course of hearing the applicant had admitted the charges against him in the inquiry proceeding.

10. We have perused the various documents placed on record, we have also considered the rival submissions on behalf of the applicant and the learned P.O. It is material to note that there was evidence in the inquiry that when the applicant was in service he used to enter the Dispensary premises under influence of liquor, used to abuse medical officer on duty in unparliamentarily language. The evidence further disclosed that the applicant also destroyed the Government property and after complaint made by the superior officer to the local police station he was arrested under IPC 214 and

427. It seems that the applicant's behaviour was not clean and excellent. Even the charge sheet of the D.E. was issued as per rule-8 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 but it was not accepted by the applicant on several occasions. Even in the reply-affidavit filed by the respondents in para nos. 14 to 16 it is specifically mentioned that the applicant was given full opportunity to appoint a next friend for his defence, but he never complied with. The applicant submitted a list of 20 witnesses on his behalf out of which 11 witnesses were examined on 29/11/2011 and 30/11/2011. Rest of 9 witnesses were not examined at the request of the applicant because it was mere repetition.

11. With facts reproduced in above paras, we feel that the applicant has been given enough opportunity during DE, he has been given opportunity to cross examine the witnesses. However in the final appeal during course of hearing he had himself admitted the charges also. Even then appellate authority has shown mercy to him and he has been awarded lesser punishment than dismissal. The law is settled that the court or the tribunal have very limited jurisdiction while examining the findings recorded by the inquiry officer and the punishment awarded by the disciplinary authority. The law is that if the findings recorded by the inquiry officer are based on reasonable evidence, then interference is not permissible. In view of

this legal position and nature of the misconduct coupled with the admission of guilt in the appeal by the applicant in departmental appeal, this bench cannot interfere in this matter. The applicant came to dispensary and under influence of liquor he abused his superior officer in filthy language and caused damage to the government property, considering this misconduct it is not possible to accept that the punishment awarded is shockingly disproportionate or shake the conscious of the court or it is perverse In view of this, we do not find any reason to interfere with punishment awarded in the D.E. Hence, the following order –

ORDER

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

(A.D. Karanjkar)
Member(J).

(Shree Bhagwan)
Member (A).

Dated :- 22/02/2019.

*dnk.