

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 630 of 2017 (DB)

Pramod S/o Panjabrao Kadam,
Aged about 52 years, Occ. Service,
R/o Plot No.15, Gajanan Prasad Society,
B/H Veterinary College,
Seminary Hills, Nagpur.

Applicant.

Versus

- 1) State of Maharashtra through
Secretary Ministry of Revenue,
Mantralaya, Mumbai-400 032.
1. A) The Divisional Commissioner,
Nagpur Division, Nagpur.
- 2) The District Collector,
Civil Lines, Nagpur.

Respondents.

S/Shri S.G. Karmarkar, N.Y. Lande, Advs. for the applicant.

Shri A.M. Ghogre, P.O. for respondents.

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

Date of Reserving for Judgment : 18th July, 2019.

Date of Pronouncement of Judgment : 28th August, 2019.

JUDGMENT

Per : Anand Karanjkar : Member (J).

(Delivered on this 28th day of August,2019)

Heard Shri S.G. Karmarkar, learned counsel for the applicant and Shri S.A. Sainis, learned P.O. for the respondents.

2. In the O.A. the applicant is challenging the punishment awarded by the Collector, Nagpur thereby withholding two annual increments for two years without affecting the future increments and treating the period of suspension as duty period only for determining the retiral benefits. It is grievance of the applicant that his appeal preferred before the Commissioner was heard by the Deputy Commissioner, Nagpur Division, but the final order was passed by the Divisional Commissioner, Nagpur. It is submitted that the Appellate Authority did not hear the appeal personally and therefore it was in violation of the law.

3. The applicant is challenging the inquiry mainly on the ground that there was no substance for initiating the departmental inquiry against him. It is submitted that the charges levelled against the applicant were groundless and the Inquiry Officer conducted the inquiry without following the principles of natural justice.

4. It is contended that the act of the applicant was not misconduct and therefore there was no propriety for conducting the disciplinary proceeding. It is contention of the applicant that there was no evidence in support of the charges, but the Inquiry Officer mechanically recorded the findings that charges were proved.

According to the applicant, the findings are recorded by the Inquiry Officer in absence of evidence and as material evidence was not considered, therefore, findings are vitiated. It is submitted that the Collector, Nagpur and the Commissioner, Nagpur Division without examining the inquiry papers acted upon the report submitted by the Inquiry Officer and therefore it is a miscarriage of justice, therefore, impugned order passed by the Collector, Nagpur on 20/01/2017 be quashed and set aside and all monetary benefits be given to the applicant.

5. It is submitted that there was no reason for suspension of the applicant and for continuing the suspension and treating the suspension period as suspension, therefore, this part of the order is also illegal.

6. We have heard the submission on behalf of the respondents. It is submitted by the learned P.O. that there were several complaints received against the applicant about his misbehaviour while discharging the duty. The applicant was in habit to attend the duty at late hours. He used to sign the muster roll ignoring red mark in the muster against his name. The applicant used to avoid the official work and direction issued by the Superiors. Due to this conduct of the applicant, the other Officers of the Revenue Department faced difficulties while implementing the

Election programme. It is submitted that due to negligent and arrogant behaviour of the applicant time to time show cause notices were issued to the applicant, but there was no improvement and due to lapses committed by the applicant, the other Officers were compelled to utilise services of the other staff members for implementing the election process. It is submitted that considering all this material the departmental inquiry was initiated by the Collector against the applicant. The Inquiry Officer was appointed, opportunity was given to the applicant to submit reply to the charge sheet. The Inquiry Officer conducted the inquiry as per the rules and the applicant participated in the inquiry and cross examined the witnesses examined on behalf of the Department. It is submitted that opportunity of hearing was also given to the applicant and thereafter the Inquiry Officer came to the conclusion that the charges against the applicant were duly established. It is submitted that the Collector, Nagpur who was the Disciplinary Authority heard the applicant and thereafter passed the order accepting the report of the Inquiry Officer. It is submitted that there is no substance in the contention of the applicant that the appeal was heard by the Deputy Commissioner and decided by the Divisional Commissioner. According to the respondents, there is no flaw in the inquiry or violation of the principle of natural justice, therefore no inference is required.

7. We have perused the charge sheet. It seems that the first charge against the applicant was his avoidance to discharge his official duty assigned to him. The second charge was that the applicant insulted his Superior Officers and discarded to comply their directions. The third charge was that the applicant used to remain absent from the office during period between 1 to 3 p.m. as he used to visit his house for the lunch and fourth charge was that due to negligent behaviour of the applicant and lapses on his part, the Department was compelled to spend extra money and time to implement the election programme.

8. We have also perused the reply submitted by the applicant to the charge sheet which is at page no.46 of the P.B. We have also perused the evidence of the witnesses Shri B.S. Meshram then Deputy Collector and Election Officer, Smt. Rohini Aylawar, Naib Tahsildar and the report of the Inquiry Officer. It appears that opportunity to cross examine the witnesses was given to the applicant, the applicant did not adduce evidence. After reading the evidence of Shri B.S. Meshram then the Deputy Collector and Smt. Rohini Aylawar, Naib Tahsildar, it is not possible to accept that there was no evidence in support of the charges levelled against the applicant. Both the witnesses have firmly deposed that the applicant was not following the oral directions issued by B.S. Meshram then the Deputy Collector while implementing the Legislative Assembly

Election of 2014. He was not attending the duty on time, the applicant remained absent from duty on 28/6/2015. Similarly on 1/7/2015 he was absent from the duty from 1 to 3.30 p.m. Smt. Rohini Aylawar has deposed that on 1/7/2015 the applicant came late to the Office. The applicant was directed to hand over the EVM Machine to other Office and he was directed to comply this work within three days, but due to behaviour of the applicant, there was delay of six days in completing this work. Similarly the applicant was negligent in doing the work to link the Election Identity Card with the Adhar Card. The applicant was issued letter to do this work, but he refused to receive the letter. We have gone through the cross examination of both the witnesses, Smt. Aylawar in her examination stated that the applicant used to attend the office at late hours and he used to sign muster roll neglecting the red mark against his name. It was specifically stated by Smt. Rohini Aylawar that the red marks were made by her and thereafter the applicant signed the muster roll. It has also come in evidence that the applicant was unable to handle the Computer, he was unable to draft noting and he was disregarding the directions issued by the Superior. When the applicant was directed to hand over the EVM Machine to Krushi Bhavan, he informed Smt. Aylawar to depute some other employee for doing that work. It further appears that time to time memos were issued to the applicant and the said memos were replied by the applicant. First memo dated 17/4/2015

was issued to the applicant and his explanation was called that he was not attending the Office at 10.15 a.m., he used to visit Office at late hours, oral warnings were given to him, but there was no improvement. On 17/4/2015 the applicant was not present in the Office at 10.15 a.m., the applicant replied this memo and informed that on 17/4/2015 due to domestic work he was unable to attend the Office, as he could not attend the work in time, but he came late to the Office without seeking the Casual Leave.

9. The second memo is dated 1/7/2015. In the memo it was alleged that the Camp was organised to link the Adhar Card with the Election Identity Card and the applicant was deputed for this work. Since 26/6/2015 the applicant did not attend the duty on a single day as per the Office hours and the applicant signed the muster roll even though there was a red mark against his name in the muster roll. On 28/6/2015 as per the direction of the Election Officer the applicant was directed to attend the Camp, but the applicant remained absent. It was also alleged in the memo that on every official day he used to remain absent from the Office from 1 to 3 p.m. and he was visiting his Office for the bills. It was also alleged that the applicant avoided to follow the oral directions issued by the Superior Officers and he used to do his personal work of share marketing in the Office. This memo was replied by the applicant and he informed that on every day it was difficult from him to locate the College, therefore, there

was delay in joining the duty. It was alleged by the applicant that as other employees had signed the muster roll disregarding the red marks, therefore, he also signed the muster roll though there was red mark against his name. It is contended by the applicant that on 28/6/2015 he was ill due to fever and he had telephone Smt. Aylawar and had sought permission. The applicant also admitted in the reply that with permission of Smt. Aylawar madam, he used to visit his home daily in between 2.30 to 3.00 p.m. for the lunch. After reading this reply submitted by the applicant one thing is clear that this reply given by the applicant in fact corroborate the evidence of Smt. Aylawar and Shri Meshram. It is pertinent to note that it is alleged by the applicant that the Officers hatched conspiracy and made false case against him, but I do not see any merit in this contention for the reason that there was no evidence brought in inquiry that there was any enmity or strained relations between Shri Meshram and Smt. Aylawar with the applicant.

10. The legal position is very settled that the judicial authority shall not interfere in the departmental inquiry and the punishment awarded, unless it is shown that the findings recorded by the Inquiry Officer are perverse or the findings are not based on evidence or there was violation of principles of natural justice. After reading the report of the Inquiry Officer, it is not possible to accept that how principles of natural justice are violated. As the findings recorded by

the Inquiry Officer are based on evidence, in fact that evidence is corroborated by the reply submitted by the applicant. It appears from the reply dated 16/7/2015 submitted by the applicant that his house is situated at Hazari Pahad and the applicant was daily visiting his house for the lunch and this fact itself corroborates that it was not possible for the applicant to travel from the place of work to the house and return to the place of work within a period of half an hour. Thus it seems that the applicant had no regard for his duty and official work and he was not following the official directions. The duty of the applicant was to implement the Election programme. The applicant had no regard for the Election programme, he also disregarded the fact that even senior Officers were taking their lunch in the Office and he continued to visit his house though he was aware that it was not possible for him to come back within a permitted period of lunch interval. If this entire evidence is considered, then it is not possible to accept that the findings recorded by the Inquiry Officers are not based on evidence and there was no propriety to initiate the departmental inquiry.

11. It is evident from the conduct of the applicant and reply submitted by him that he disregarded the directions of the superior officers and he was not serious in taking active part for implementation of the Election programme. As a matter fact this was a serious misconduct. It seems that the Inquiry Officer and the

Disciplinary Authority after considering all these aspects have arrived to the conclusion that the applicant's misconduct was proved.

12. It seems that the Disciplinary Authority i.e. the Collector, Nagpur before passing the order gave opportunity of hearing to the applicant and thereafter passed the order to withhold two increments of the applicant for a period of two years without affecting future increments and the suspension period is treated as suspension so far other retiral benefits of the applicant are concerned. That considering the attitude of the applicant and his misbehaviour, it is not possible to accept that the punishment awarded is shockingly disproportionate to the misconduct.

13. Now we have examined all the contentions raised by the applicant in this matter and we came to the conclusion that the findings of the Inquiry Officer are not perverse, they are based on evidence and there is no violation of principles of natural justice. In this situation, we do not see any merit in the contentions regarding any irregularities committed by the Division Commissioner while deciding the appeal. After reading the order passed by the Divisional Commissioner, Amravati on 3/5/2017 it seems that the representative of the Collector, Nagpur was present when the appeal was finally heard on 27/4/2017 and 2/5/2017. On request of the applicant and his counsel the matter was adjourned and it was kept on 3/5/2017.

The matter was heard and after the hearing the Divisional Commissioner observed that there was no substance in the appeal, consequently he dismissed the appeal, but in view of the findings recorded by this Bench after examining all the contentions of the applicant, we are of the firm view that as the findings recorded by the Inquiry Officer are based on evidence and as the punishment is not shockingly disproportionate, therefore, it is not necessary to interfere in this matter. Hence, the following order –

ORDER

The O.A. stands dismissed. No order as to costs.

(Anand Karanjkar)
Member(J).

(Shree Bhagwan)
Vice-Chairman.

Dated :- 28/08/2019.

*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 V.C. and Member (J).

Judgment signed on : 28/08/2019.

and pronounced on

Uploaded on : 28/08/2019.