**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**

**NAGPUR BENCH NAGPUR**

**ORIGINAL APPLICATION No. 866 of 2012 (D.B.)**

Shri Raymond Lancy Rodrigues,
Aged about 61 years, Occ. Retired Teacher,
R/o P.O. Shithady, near Corporation Bank, Main Road,
Via Moodbidri, Manglore (Karnataka).

**Applicant**.

**Versus**

1) State of Maharashtra,
through its Secretary, Department of
Higher & Technical Education,
Mantralaya, Extension Building,
Government of Maharashtra, Mumbai.

2) The Director of Higher & Technical Education Department,
having its office situated at Central Building,
Shivaji Nagar, Pune.

3) The Director,
Vasant Rao Nail Institute of Arts &
Social Sciences, Reserve Bank of India Square,
Nagpur.

**Respondents.**

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**Ms.K.K. Pathak, S.A. Pathak, Advocates for the applicant.**

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

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

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**JUDGMENT**

**Per : Member (J)**.

**(Delivered on this 10th day of December,2018)**

Heard Ms. K.K. Pathak, learned counsel for the applicant and Shri A.M. Ghogre, learned P.O. for the respondents.

2. The applicant is challenging punishment awarded to him by the Government of Maharashtra in the departmental inquiry vide impugned order dated 19/05/2010 and the corrigendum dated 28/09/2010. The facts in brief are as under –

3. The applicant was appointed as Lecturer in the year 1978, till 1995 he served in the Government Colleges at Mumbai. In the year 1995, the applicant was transferred to the Institute of Science at Nagpur.

4. It is case of the applicant that he was surprised to notice the suspension order dated 08/03/2001, by this order the applicant was placed under suspension in contemplation of the departmental inquiry. The suspension was challenged by the applicant and directions were given in the O.A. and thereafter charge sheet was served on the applicant on 23rd March, 2005. The departmental enquiry was conducted, the learned Inquiry Officer Shri L.N. Bagul retired Deputy Secretary, Government of Maharashtra submitted his report. The learned Inquiry Officer held that there was absolutely no

evidence in support of the charge No.2,3 & 4 and held that only charge no.1 was partly proved. The learned Inquiry Officer held that the applicant did not inform the Government about the construction of one Bungalow, though that information was given by the applicant to his superiors when the applicant withdrew amount permanently from the GPF. The enquiry officer also held that information was given by the applicant in confidential personal information proforma. It was held by the enquiry officer that as information about construction of house property was not given to the Government, therefore the charge No.1 was partially proved.

5. On perusing the inquiry report, second show cause notice was issued to the applicant, who was retired in the meantime and thereafter the respondent no.1 held that as the applicant retired, therefore it was not possible to award minor punishment and directed that suspension period of the applicant from 8/3/2001 till 31/5/2005 be treated as suspension period and 2% amount out of the subsistence allowance be recovered from appellant as fine. Lateron the respondent no.1 again issued order dated 28/09/2010 as corrigendum to the earlier punishment order and clarification was made that 2% amount be deducted out of the salary of the applicant and not from the subsistence allowance.

6. It is contention of the applicant that there was no stretch of evidence against him for his suspension and for initiating the departmental inquiry. It is submitted that time to time information was given by him about his movable and immovable properties t the Government. It is submitted someone lodged complaint therefore, the matter was referred to the Anti Corruption Bureau for enquiry, there was investigation by the Anti Corruption Department and ultimately report was submitted by the Additional Police Commissioner / Director General, Anti Corruption Bureau (M.S.) that the applicant was not holding property disproportionate to his income, but it was informed that the applicant did not give information about his 3 properties situated at (1) Tolali village Samase, District South Kannad, Karnataka, (2) Shirtadi and (3) Wadikodi, Tq. Beltagadi, Karnataka to the Government. In view of the report of the Anti Corruption Bureau, the charge sheet vide Annex-A-5, dated 23/03/2005 was served on the applicant, Inquiry Officer was appointed, the inquiry was conducted and ultimately the Inquiry Officer submitted the report. It is contention of the applicant that there was no evidence against him that he was holding or possessing property disproportionate to his income. It was also held that applicant gave information and intimation about his ancestral property. The applicant also gave information to the department about construction of the house properties. It was also informed that

he incurred the loan of the Bank and he also withdrew the permanent advance from the GPF. Thus according to the applicant, after considering this material the learned Inquiry Officer rightly held that there was no substance in the charge no.2,3 &4, but wrongly held that the charge no.1 was partly proved. As against the chargeno.1, the enquiry officer held that the applicant was bound to give information to the Government, about construction of the Bunglaw and as the information was not given therefore, he committed misconduct.

7. According to the applicant, in para-30 of the inquiry report the Inquiry Officer specifically mentioned that there was evidence that the applicant raised the loan Rs.2,50,000/- from Corporation Bank in year 1986 it was repaid till 2000, the loan was incurred in the name of the applicant and his wife Mrs. Rita Rodrigues. Similarly, the applicant incurred loan on 16th June,2000 and that amount of loan Rs.3,00,000/- was utilised for constructing Bungalow at Badipudi. Similarly in 1097 the applicant permanently withdrew amount Rs.1,75,000/- from his GPF account and after considering this material the Anti Corruption Bureau (ACB) held that this property was accounted for and there was legitimate source of income for this property. The specific finding was recorded by the Inquiry Officer that as per Rule 19 of the Maharashtra Civil Services (Conduct) Rules,1979 it was mandatory to give information of the property to

the Government, but as it was not done, therefore the charge no.1 was partly proved.

8. It is contention of the applicant that as a matter of fact the department was aware that the loan was incurred by the applicant from the Bank twice for construction of the Building, the Building was constructed on the ancestral land about which intimation was given to the Government, similarly amount was permanently withdrawn from the GPF and the confidential proforma was submitted by the applicant in which the details of this property were disclosed. On the basis of this material, it is submission of the applicant that there was inadvertence or mere negligence on the part of the applicant to submit the intimation in prescribed proforma, but the fact was not totally suppressed and therefore the disciplinary authority ought to have taken this fact into consideration while awarding punishment for such inadvertent act. It is submitted that the punishment awarded by the disciplinary authority for this misconduct is shockingly disproportionate, as by awarding such punishment the suspension period was treated as suspension, consequently the applicant could not get the increments and this has affected his pay fixation at the time of his retirement, his gratuity and pension also. Thus it is submitted that punishment awarded is harsh and shockingly disproportionate and therefore interference is required in this matter.

9. The application is resisted by the respondent nos. 1 to 3. In para-4 of the reply it is submitted that the applicant is not having clean and unblemished record, the applicant purchased the landed property without information to the Government and it was misconduct as per the MCS (Conduct) Rules of 1979. It is further contended by the respondents that the complaint was received against the applicant, it was forwarded to the ACB, Mumbai. The ACB, Mumbai submitted report and considering the report the departmental inquiry was initiated. According to the respondents, the charge sheet was served on the applicant, he was given opportunity of hearing and following the principles of natural justice, the inquiry was conducted, therefore there is no illegality or error for interference in this matter.

10. We have heard arguments on behalf of the applicant and the respondents. The substantial question before this Bench is whether the conduct of the applicant not submitting the intimation in prescribed proforma to the Government wasserious misconduct for awarding harsh punishment. There is no dispute about the fact that the charge sheet was served on the applicant and as per the imputation of the charges the charge no.1 was the applicant did not furnish intimation to the Government about the following properties :-

(1) The Property situated at Tolali, Post Samase, District South Kannad, Karnataka, (2) The Property situated at Shirtadi, Karnataka constructed building after incurring loan Rs.1,67,500/- from the Bank and (3) The Property situated at Badipudi, Tq. Beltagadi, Karnataka, constructed Bungalow for Rs.4,51,000/-.

11. In para-21 the learned Inquiry Officer has examined the evidence and it is observed that in the confidential statement it was mentioned by the applicant about his Bungalow time to time and this fact was not suppressed from the department. It is also observed by the Inquiry Officer that the properties covered in charge no.1 were not disproportionate to the income of the applicant and were not illegally acquired by the applicant. It was noticed by the Inquiry Officer that the applicant and his wife Mrs. Rita Rodrigues jointly incurred loan Rs.2.5 lakhs in the year 1986 from the Corporation Bank, certificate was issued by the Corporation Bank that on 16th June,2000 loan Rs.3,00,000/- was incurred by the applicant for construction of the house. The plan and estimate of the Bungalow of April,1997 was also examined by the controlling officer and perusing this documents, in July,1997 and September,1997, the was permitted to withdraw finally Rs.1,75,000/- from this GPF account to construct the Bungalow at Badikodi. It is observed by the Inquiry Officer that there were administrative lapses committed by the applicant in not informing the construction of the Bungalow to the Government and therefore the

charge no.1 was held partly proved. The Inquiry Officer held that the charge nos. 2,3 and 4 were not proved by the department.

12. After perusing this material, it seems that the applicant incurred the loan from Corporation Bank twice, first in the year 1986 and second in the year 2000. Secondly the applicant withdrew the amount of 1,75,000/- permanently from his GPF account. It must be mentioned that whenever a Government servant intends to withdraw any amount permanently from the GPF account, he has to submit the documents and without documentary proof, no competent authority would permit the final withdrawal. It appears that the plan and estimate of the Bungalow was submitted by the applicant and after perusing that documentary evidence, the competent authority permitted the applicant to withdraw amount Rs.1,75,000/- permanently from his GPF account. Under these circumstances it is not possible to say that there was total suppression of the fact from the employer or the higher officers. Similarly, in the confidential proforma at page nos. Of p.b. 132 and 133 there is specific mention of the immovable property, therefore only question remains whether conduct of the applicant not submitting the information in prescribed proforma to the Government was a serious misconduct for awarding such harsh punishment.

13. It appears from the punishment awarded that the suspension period was treated as suspension and as an impact of this order, the applicant could not get increment during the suspension period. It has affected his pay, gratuity and pension. It is pertinent to note that the disciplinary authority initially directed to recover 2% amount from the subsistence allowance, because suspension period was treated as suspension. Lateron the disciplinary authority on 28/09/2010 issued corrigendum and substituted the word “salary” for the word “subsistence allowed” in the final order dated 19/05/2010. It is important to note that when the suspension period was treated as suspension, the consequence is that whatever amounts were paid to the applicant during that period cannot be labelled as salary, but should have been treated as subsistence allowance. If this corrigendum dated 28/09/2010 is perused, then one has to say that there was dilemma in the mind of the competent authority.

14. In this background, I would like to consider whether this conduct of the applicant was serious misconduct within the meaning of the service rules. In case of ***Zunjarrao Bhikaji Nagarkar Vs. Union of India & Ors.,2002 (2),685,*** situation was examined by the Hon’ble Apex Court. In case before the Hon’ble Apex Court the delinquent was Commissioner of Central Excise, he did not choose to the impose any penalty on the assessee. The Board, thereafter

decided to prefer appeal before the Appellate Tribunal. In this case, the Hon'ble Apex Court examined what is meaning of term misconduct. Considering the conduct of the delinquent in that case the Hon'ble Apex Court after applying the tests observed that it was not misconduct because the delinquent was functioning as quasi-judicial officer.

15. In para-29 of the Judgment it is observed by the Hon'ble Apex Court that in case of ***State of Punjab Vs. Ex-Constable Ram Singh (1992) 4 SCC 54,*** the Hon'ble Supreme Court examined the definition of misconduct as given in Black's law dictionary and it was observed as under :-

"*Thus it could be seen that the word "misconduct" though not capable of precise definition on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour, unlawful behaviour, wilful in character, forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty, the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject-matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve."*

16. In para-40 of the Judgment the Hon'ble Apex Court further observed that "*When we talk of negligence in a quasi-judicial*

*adjudication, it is negligence perceived as carelessness, inadvertence or omission but as a culpable negligence."*

17. In our opinion while considering the term misconduct several other factors are required to be considered. Whether any act is misconduct or not is to be judged on the basis of extraneous objective circumstances. The first factor will be whether the Government servant acted in a manner as would reflect on his reputation or integrity (i) whether he acted in good faith or devotion to his duty. (ii) whether there is prima facie material to show recklessness or disregard in discharging the duty, whether the act amounts to unbecoming to a Government servant, whether the Government servant omitted the prescribed conditions essential for the exercise of the statutory powers or whether the government servant acted in order to unduly favour any other party. The law is thus settled that a mere technical violation or mere error or omission or inadvertence does not amount to misconduct if the element of culpability is absent.

18. In the present case it seems that the intimation was given time to time by the applicant to his superior officers about the landed property and the construction incurring Bank loans for construction of the house property and for withdrawing GPF amount permanently. Only negligence of the applicant was that he did not submit the

information in the prescribed proforma to the Government. It seems that putting finger on this flaw the harsh punishment is awarded to the applicant.

19. Though it is alleged in the reply para-4 that the applicant was not having the clean and unblemished service record, but as a matter of fact in the departmental inquiry nothing was placed on record to show that any act was committed by the applicant involving moral turpitude or he was guilty of any offence or any wrong was committed by him in his civil life. In case of *Zunjarrao* (cited supra) the Hon'ble Supreme Court ultimately held that it was not a case to initiate the disciplinary proceeding against the Commissioner of Central Exicise and ultimately quashed the charge sheet. In the present case it seems that intimation was given by the applicant about his properties to his Superiors and others when he submitted the confidential proforma the facts were made open by him and this was also accepted by the Inquiry Officer. While awarding the punishment it was duty of the Inquiry Officer to apply mind to the nature of the misconduct and to consider whether by doing such act any disadvantage was acquired by the delinquent and / or any loss was caused to the government or by that act of the delinquent third person has got any benefit. In the present case after reading the punishment order, it seems that the disciplinary authority did not apply mind to this situation and mechanically awarded the

punishment. The provision made in the service rules to hear the delinquent before punishing him, is made for some substantial objects. It is not only formality it is duty of the disciplinary authority to consider the submissions of the delinquent in order to decide the liability and the quantum of the punishment to be awarded. It seems that only to discharge the formality, the second show cause notice was served on the applicant to show cause why punishment should not be awarded and without considering the submissions of the applicant mechanically punishment was awarded that too without considering the impact of punishment on the future of the applicant.

20. It must be noted that Rule 19 in MCS (conduct) Rules 1979 is introduced with some specific object, it is to check the illegal acquisition of property by the Government servant taking undue advantage of his official position. This provision is incorporated to curb the corruption. In this regard it was duty of the disciplinary authority to examine the alleged misconduct of the applicant before awarding the punishment, but unfortunately it is not done. It seems that the applicant was placed under suspensation vide order dt/8 March 2001. The Director General ACB Maharashtra vide letter dt/ 19 April 2003 informed the Government that the applicant was not holding or possessing property disproportionate to his income, inspite of these facts the suspension period was continued till 31 May 2005. It appears from the record that though O.A. No.553/2004 was filed to

challenge the suspension no decision was taken to see whether it was necessary to continue the suspension looking to the misconduct and the nature of the duty of the applicant. It was duty of the Government to review the suspension after receiving the report from the Director General ACB, but it was not done.

21. As the suspension period is treated as suspension from the year 2001 till 2005 the applicant could not receive any increment and secondly in addition to 2% from his subsistence allowance / salary of a period of suspension was ordered to be recovered. As a matter of fact this punishment was extremely hard when the department was aware about the properties of the applicant, construction of the building and bungalow and legitimate source for the construction, therefore, in our view there was no propriety to award such harsh punishment. It seems that the Inquiry Officer as well as the disciplinary authority merely put a finger on a statutory provision that it was necessary to comply the Rule 19 MCS (conduct) Rules 1979 by giving intimation in prescribed proforma to the Government without considering the fact that the fact was not suppressed. In this case neither by not complying the statutory requirement the applicant got any benefit nor by his act he allowed any person to get any benefit and no loss was caused to the Government at all. Keeping in view these circumstances though the applicant was retired when the punishment was awarded, there was

no reason to award such harsh punishment to the applicant. The disciplinary authority could have closed the matter observing that the matter was of a trifle nature not requiring punishment. We, therefore, hold that the punishment awarded to the applicant in this matter is extremely harsh and shockingly disproportionate, therefore, interference is required. In the result, the following order :-

**ORDER**

The application is allowed. The impugned orders awarding punishment dated 19/05/2010 and corrigendum dated 28/09/2010 are hereby set aside. It is directed to treat suspension period of applicant as duty period. The respondents are directed to issue the consequential benefits, after re-fixation of salary of the applicant after releasing the increments and to revise the pension of the applicant. The respondents shall comply the order within four months. No order as to costs.

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

**(Shree Bhagwan)**
**Member (A).**

**Dated :- 10/12/2018.**

*dnk.