

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 269/2019 (D.B.)

Gajanan S/o Shamrao Lonkar,
Aged about 43 years, Occ. Nil,
R/o at Post – Yashoda Nagar,
Pawde Layout, Borda, Tah. Warora,
District - Chandrapur.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Revenue Department,
Mantralaya, Mumbai-32.
- 2) Divisional Commissioner,
Nagpur Division, Nagpur.
- 3) The Collector, Chandrapur,
Tah. and District Chandrapur.

Respondents.

Shri N.S.Warulkar, Id. Advocate for the applicant.

Shri H.K.Pande, Id. P.O. for the respondents.

**Coram :- Shri Shree Bhagwan, Vice-Chairman and
Shri M.A.Lovekar, Member (J).**

Dated :- 25/01/2022.

JUDGMENT

Per : Member (J).

Heard Shri N.S.Warulkar, Id. Counsel for the applicant and
Shri H.K.Pande, Id. P.O. for the Respondents.

2. Challenge in this application is to the punishment of
compulsory retirement imposed on the applicant on conclusion of
departmental enquiry.

3. Facts leading to this application are as follows. The applicant was working as a Godown Keeper at Chimur, District Chandrapur. Crime No. 3049/2013 was registered against him under Section 3 punishable under Section 7 of the Essential Commodities Act on the allegation that on 26.09.2013 one Shri Hiwarkar who was running a 'Fair Price Shop' was caught downloading stolen food grains received by him from Government godown, in a private godown of one Shri Farukh Soudagar.

On 27.09.2013 Tahsildar, Chimur issued a show cause notice (A-4) to the applicant as to why, on the basis of what had come to light, departmental inquiry under the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 be not initiated against him. On 03.10.2013 the applicant gave reply (A-5) that on 26.09.2013 he had not distributed sugar-bags from the Government godown to said Shri Hiwarkar resulting in wrongful gain to him nor was he guilty of dereliction of duty.

By order dated 30.09.2013 (A-6) respondent no. 3 placed the applicant under suspension in view of proposed departmental inquiry against him.

On 26.05.2014 respondent no. 3 issued chargesheet along with annexures (A-7) to the applicant. Following charges were levelled against him :-

Jh ft-, l-yksudj] xlnke j{kd] rgfl y dk; kzy; fpej ; kps fo: /n yko.; kr vkysysnks'kkjksi

nks'kkjksi dekad 1

Jh ft-, l-yksudj] xlnke j{kd] rgfl y dk; kzy; fpej ; kps fo: /n ftouko'; d oLrq vf/kfu; e 1955] dye 3] 7 vll; s vij/k dekad 3049@2013 ud kj xtgk nk[ky dj.; kr vkysyk vkgs

nks'kkjksi dekad 2

/kkU; kpk vi gjk dj.kkjs LoLr /kkU; nplkunkj ; kauk , dkp efgU; kr , dkp ; kst upsnku rsfru oGk /kkU; kpsforj .k gkr vl Y; kph ckc ofj "BkpsfunZ kukl vk.kuu u nsk

nks'kkjksi dekad 3

Jh ukens ukjk; .k fgojdj] LoLr /kkU; nplkunkj xnxkø gs vfrfjDr /kkU; kph mpy d: u vi gjk djhr vl Y; kph ckc ekfgr vl uu l qnk ofj "Bkps funZ kukl vk.kuu fnysyh ukgh-

nks'kkjksi dekad 4

/kkU; kpk vi gjk dj.kkjs LoLr /kkU; nplkunkj ; kps nj efgU; kps /kkU; kP; k fu; rukr njoGh cny gkr vl Y; kps ckc ekfgr vl uu l qnk ofj "Bkps funZ kukl vk.kuu fnysyh ukgh-

nks'kkjksi dekad 5

xlnkekrhy FkLi hph jpuk fu; ekud kj o ; kst ukud kj Bø.; kr vkysyh ukgh- , df=ri .ksBø.; kr vkyl vkgs fcu dkmZykoysyukgh-

nk'skkj ksi d'ekad 6

i jfeV ud kj /kkU; kpsforj .k u dj .ks

nk'skkj ksi d'ekad 7

tsI kBk uknogh B0. ; kr vkysyh ukgh-

nk'skkj ksi d'ekad 8

vk'sk/k I kBk uknogh v | kor B0. ; kr vkysy ukgh-

By filing detailed reply (A-8) the applicant denied all these charges.

Shri S.K.Pazare, retired Tahsildar was appointed as inquiry officer. One Shri G.S.Kokarde from the office of District Supply Officer, Chandrapur was appointed as Presenting Officer. During the inquiry the sole witness who was cited by the department i.e. P.S.I. Shri Thakare attached to Chimur police station was examined. He had conducted investigation of Crime No. 3049/2013. The inquiry officer, in addition to oral account of P.S.I. Shri Thakare relied on the documents listed in A-4 of chargesheet.

With covering letter dated 30.12.2016 inquiry officer submitted entire record of inquiry including his report, to respondent no. 3 (collectively marked A-9).

The inquiry officer considered oral account of P.S.I. Shri Thakare, documents listed at A-4 attached to chargesheet and written submission of the Presenting Officer as well as the applicant/ delinquent. After these stages of inquiry were over the inquiry officer directly proceeded to submit report of inquiry to respondent no. 3. He held that charges 2 to 8 were proved.

Thereafter, respondent no. 3 who was the Disciplinary Authority, totally agreed with the findings recorded by the inquiry officer and issued notice (A-10) to the applicant proposing punishment of compulsory retirement and calling upon him to show cause as to why it should not be imposed. To this notice the applicant gave reply dated 04.05.2018 (A-11) again denying all the charges in toto and praying for exoneration.

On 15.05.2018 Judgment of acquittal (A-3) was passed in R.C.C. Number 84/2014 arising out of crime number 3049/2013, against the applicant and the three co-accused.

By order dated 19.11.2018 (A-1) respondent no. 3 imposed punishment of compulsory retirement on the applicant.

The applicant then preferred appeal against the order passed by respondent no. 3, before respondent no. 2. (The appeal memo

is at A-12). Respondent no. 2 dismissed the appeal by order dated 22.03.2019 (A-2). Hence, this application.

4. On behalf of the applicant following grounds are raised-

A. The applicant was falsely implicated to shield the real culprits.

B. No genuine attempt was made either by the inquiry officer or respondent no. 3 to pinpoint identity of real culprits.

C. This was a case of "No evidence". The sole witness was a Police Officer. He was not competent to say anything about charges 2 to 8 levelled against the applicant. To prove charges nos. 2 to 8 no-one from the department was examined.

D. The inquiry officer clearly erred by holding that charges nos. 2 to 8 were proved. In support of this conclusion he recorded vague and ambiguous reasons.

E. The disciplinary authority mechanically accepted findings recorded by the inquiry officer. No separate reasons were recorded therefor.

F. The criminal case against the applicant and three others resulted in acquittal primarily because of failure of the

prosecution to produce and prove relevant documentary evidence like audit report, etc. Even in the departmental inquiry same lapse was committed.

G. Record of the applicant was unblemished.

H. Punishment of compulsory retirement was too harsh.

5. Reply of respondent no. 3 is at page nos. 97 to 101. According to respondent no. 3 the departmental inquiry was held strictly in accordance with the relevant Rules. Opportunity was given to the applicant to meet allegations levelled against him by putting forth his defence. Principles of natural justice were fully adhered to. The disciplinary authority issued show cause notice to the applicant after agreeing with the findings recorded by the inquiry officer. Reply of the applicant was duly taken into account and only thereafter punishment of compulsory retirement was imposed. The order of acquittal passed in criminal case will in no way have any impact on the procedure which was duly followed during the departmental inquiry.

6. Careful reading of report of the inquiry officer reveals that during the inquiry one important formality was not complied with. It is prescribed under Sub Rule (20) of Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules. This sub rule reads as under:-

"(20) The inquiring authority may, after the Government servant closes his case and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him."

Now, the question arises as to what would be the effect of this lapse on the departmental enquiry – whether the lapse would irremediably vitiate the enquiry or whether it will have no adverse impact whatsoever on the enquiry or whether in the facts and circumstances of the case the lapse can be directed to be cured with a further direction that from that stage onwards further/fresh enquiry shall be conducted. To find out the answer reliance may be placed on **Vijay S/o Shamrao Bhale Vs. Godavari Garments Ltd., Judgment delivered by the Bombay High Court on 07.07.2010 in W.P. No. 5625/1997**. In this case it is held:-

"The said Rule mandates it is the inquiring authority to question the delinquent on the circumstances appearing against him in the evidence, so that the delinquent may get opportunity to explain any circumstances appearing in the evidence against him. In the present case, the delinquent has

not examined himself. If the delinquent has not examined himself, in that case the Inquiry Officer is not left with any discretion but has to question the delinquent about the circumstances appearing against him. The use of the word "shall" shows that the said provision is imperative and the same is mandatory. In the first part of the said Sub rule the legislature has used the word 'may', but when the delinquent has not examined himself has used the word "shall", which itself clarifies that the word "shall" has to be considered as mandatory. The use of the word 'may' at one place and 'shall' at another place in the same rule would strengthen the inference that these words have been used in their primary sense, and that 'shall' should be considered as mandatory. The use of the word 'shall' therein as against 'may' shows that the same is mandatory. The use of the word 'shall' with respect to one matter and the use of word 'may' with respect to another matter, in the same rule, would lead to the conclusion that the word 'shall' imposes an obligation whereas the word 'may' confers a discretionary power. If, the delinquent has not examined himself, then it is obligatory on the inquiring authority to question the delinquent on the circumstances appearing against him in the evidence for the purposes of

enabling him to explain any circumstances appearing in the evidence against him, and if the delinquent has examined himself, then the discretion vests with the Inquiry Officer to question the delinquent or not."

It may be stated that in this case, during departmental enquiry the applicant did not examine himself.

Further reliance may be placed on "**Shri Masuood Alam Khan-Pathan Vs. State of Maharashtra and Ors (Judgment delivered on 07.05.2009 in W.P. No. 2611/2008 by the Bombay High Court)**". In this case it is observed:-

"At this stage, it is also necessary to consider the effect of omission to comply with the requirement of the rule of Audi Alteram Partem which is pregnant in sub-rule 20 supra. As a general rule, the enquiry vitiates for non-compliance of the said sub-rule. Where there is violation of natural justice no resultant or independent prejudice need be shown, as the denial of natural justice is, in itself, sufficient prejudice and it is no answer to say that even with observance of natural justice the same conclusion could have been reached."

It is further observed:-

"Considered from this angle, learned counsel appearing for the delinquent officer/ petitioner has not only successfully demonstrated before us that the petitioner was entitled to have his right to call for the material which was prejudicial to his case but he went a step ahead and successfully demonstrated as to how infraction of sub-rule 20 (supra) has caused substantial prejudice to the petitioner. In the light of the view we are inclined to adopt, it is not necessary to set out the substantial prejudice suffered by the petitioner due to non-compliance of the natural justice flowing from sub-rule 20 (supra); which has direct effect on the legality and validity of the departmental enquiry as such.

At one stage we thought of remitting the matter back to have fresh inquiry from the stage the illegality has crept in. But having realised the long span of time ranging for almost more than 20 years, we thought it better to give second thought"

Thus, the ratio which can be culled out from this Judgment is that when there is non-compliance of Sub-Rule 20 of Rule 8 of the M.C.S. (Discipline and Appeal) Rules, ordinarily the lacuna should be allowed to be cured by remanding the matter whereupon the inquiry may proceed further afresh after curing the lacuna and may reach its logical

conclusion. In the above referred case this mode was departed from in view of certain facts of the case – the most significant being lapse of 19 years from retirement of the delinquent and substantial recovery made from his pension amount towards wrongful loss caused by him to the Government.

7. On the basis of legal position laid down in aforementioned rulings proper course to adopt would be to remand the matter to the disciplinary authority with necessary directions.

8. The order of remand will also necessitate issuance of certain other directions. In **Md. Harul Al Rasid Vs. Union of India & Ors. (Judgment delivered on 02.12.2014** by Full Bench of Calcutta High Court) following question was referred for determination :-

"When a disciplinary proceeding is quashed including the order of dismissal from service and the matter is remanded back to the Disciplinary Authority for starting the proceeding de novo from the stage of enquiry would the delinquent be entitled to be reinstated and be allowed to join their duty as a matter of right?"

The above referred question was answered as follows:-

"A delinquent is not entitled to be reinstated as a matter of right when a disciplinary enquiry held against him has been quashed and the matter is remanded to the disciplinary authority for proceeding de novo from that stage of the enquiry. The relief of reinstatement at that stage would be dependent on the gravity and the magnitude of the misconduct alleged against him."

In this case it is observed :-

"Once the departmental enquiry has been set aside because it is patently defective, the issue arises whether an employee is entitled to be reinstated. In normal circumstances a delinquent employee who has been dismissed from service on the basis of a defective enquiry would be entitled to reinstatement with all consequential benefits. However, if the Tribunal decides that the matter should be remanded to a stage before completion of the enquiry, the employee must be put back into the same position as he was prior to the decision of the disciplinary authority."

In this case the Calcutta High Court relied on the following observations made in the case of **Managing Director, ECIL, Hyderabad & Ors. Vs. B. Karunakar & Ors. reported in (1993) 4 SCC 727:-**

"Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the enquiry, by placing the employee under suspension and continuing the enquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh enquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the enquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh enquiry from the stage of furnishing the report and no more, where such fresh enquiry is held. That will also be the correct position in law."

In this case the defect was one of non-furnishing of report of inquiry officer to the delinquent. The procedure to be followed/ adopted as laid down in this ruling will have to be adopted in the instant case as well though here the defect to be cured is different i.e. non observance of mandatory provision under Rule 8 (20) of the Maharashtra Civil Services (Discipline and Appeal) Rules.

Discussion made so far would show that the impugned order will have to be quashed and set aside and the matter remanded to the Disciplinary Authority with certain directions. Hence, the order:-

ORDER

The O.A. is allowed in the following terms:-

1. The impugned orders dated 19.11.2018 & dated 22.03.2019 (A-1 & 2) passed by respondent nos. 3 & 2 respectively are quashed and set aside and the matter is remanded to the Disciplinary Authority.
2. We direct that the applicant shall be reinstated forthwith.
3. Disciplinary/ Competent Authority shall, however, be at liberty to proceed with the inquiry by placing the applicant under suspension if deemed fit.
4. The Disciplinary Authority shall direct the Inquiry Officer and ensure that the Inquiry Officer records statement of the applicant/

delinquent as mandated under Rule 8 (20) of the Maharashtra Civil Services (Discipline and Appeal) Rules at a proper stage.

5. The Disciplinary Authority shall further direct the Inquiry Officer to conduct further/fresh inquiry from that stage onwards, complete it expeditiously and submit report to the Disciplinary Authority.

6. The Disciplinary Authority shall then proceed with the further stages as provided under the Rules.

7. No order as to costs.

(M.A.Lovekar)
Member(J).

(Shree Bhagwan)
Vice-Chairman.

Dated :- 25/01/2022.

*aps.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : A.P.Srivastava

Court Name : Court of Hon'ble V.C. and Member (J).

Judgment signed on : 25/01/2022.

Uploaded on : 27/01/2022.