

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO.66/2019 (S.B.)

Dilip Vishwasrao Adhau,
Aged about 63 years,
Retired Govt. Servant,
R/o. 30, Laxminarayan Nagar,
Shankar Nagar Road, Amravati.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Higher and Technical Education,
Extension Building, Mumbai-32.

- 2) Director,
Vocational Education and Training,
Directorate, State of Maharashtra, Mumbai.

- 3) Joint Director,
Vocational Education and Training,
Regional Office, Morshi Road, Amravati.

Respondents

Mrs.K.N.Saboo, Ld. Counsel for the applicant.
Shri M.I.Khan, Ld. P.O. for the respondents.

Coram:- Hon'ble Shri M.A.Lovekar, Member (J).

Dated:- 14th February, 2024.

JUDGMENT

Judgment is reserved on 08th February, 2024.

Judgment is pronounced on 14th February, 2024.

Heard Mrs.K.N.Saboo, learned counsel for the applicant and Shri M.I.Khan, learned P.O. for the respondents.

2. Case of the applicant is as follows. The applicant was serving as Principal of I.T.I., Amravati. He was served with a charge sheet dated 19.10.2007 that he had purchased instruments for a price which was considerably more than the market price. The Enquiry Officer held the charges to be not proved and accordingly submitted report dated 15.12.2009 (Annexure A-3). The disciplinary authority, however, differed from the Enquiry Officer and concluded that the charges were proved. This was communicated to the applicant by letter dated 01.10.2010 (Annexure A-4). The applicant was called upon to submit his say within 7 days. The applicant submitted his say dated 18.10.2010 (copy of which is placed on record and covering letter with which it was forwarded is at Annexure A-5). Thereafter, on 01.02.2011 the applicant submitted a reply (Annexure A-6) praying that the departmental proceedings be dropped. On 30.06.2014 the applicant submitted copy

of his reply dated 18.10.2010 with covering letter (Annexure A-8). By order dated 02.06.2015 (Annexure A-9) the disciplinary authority held as follows-

३. ज्याअर्थी, श्री.डी.व्ही. अढाऊ यांच्यावर ठेवण्यात आलेला दोषारोपाची चौकशी करण्याकरीता नियुक्त करण्यात आलेल्या चौकशी अधिका-यांनी सदर चौकशी पूर्ण करून दि.१५.१२.२००९ च्या पत्रान्वये चौकशी अहवाल शासनास सादर केला. सदर अहवालामध्ये चौकशी अधिका-यांनी श्री. अढाऊ यांच्यावर ठेवण्यात आलेला दोषारोप सिध्द होत नसल्याचे निष्कर्ष दिले होते. तथापि, शिस्तभंगविषयक प्राधिका-यांनी चौकशी अधिका-यांनी काढलेले निष्कर्ष अमान्य ठरवून, दि.१.१०.२०१० च्या शासन पत्रान्वये, शासनाची मान्यता घेऊन, अपचा-या विरुध्द लावण्यात आलेला दोषारोप कसे सिध्द होतात हे सकारण दर्शवून त्यावर अपचा-याचे अंतिम निवेदन मागविण्यात आले होते. त्यावर अपचारी श्री. अढाऊ यांनी त्यांच्या दि.२१.१०.२०१० व दि.६.११.२०१० च्या पत्रान्वये निवेदन सादर करण्यास मुदत वाढ मागितली होती. त्यानुसार त्यांना मुदतवाढ देण्यात आली होती. त्यावरही त्यांचे निवेदन प्राप्त झाले नव्हते. नैसर्गिक न्याय तत्वाचा विचार करून अपचा-याला बचावाची पूर्ण संधी प्राप्त व्हावी, याकारणास्तव दि.१८.१.२०११ रोजीच्या पत्रान्वये श्री. अढाऊ यांना त्यांचे बचावाचे अंतिम निवेदन सादर करण्याकरीता ७ दिवसांची मुदतवाढ देण्यात आली होती. तरीसुध्दा त्यांच्याकडून बचावाचे अंतिम निवेदन शासनास प्राप्त झाले नव्हते.

४. ज्याअर्थी, चौकशी अधिका-यांनी काढलेले निष्कर्ष शिस्तभंगविषयक प्राधिकारी म्हणून शासनाने अमान्य करून, श्री. अढाऊ यांच्याविरुध्द

बजावण्यात आलेला दोषारोप सिध्द होत असल्याचा निष्कर्ष शिस्तभंगविषयक प्राधिकाऱ्यांनी काढला आहे. शिस्तभंगविषयक प्राधिकाऱ्यांनी काढलेला निष्कर्ष सकारण अपचा-यास कळवून, त्यावर त्याचे लेखी निवेदन मागविण्यात आले होते. तथापि, विहित कालावधीत तसेच नैसर्गिक न्याय तत्वानुसार संधी देऊनसुध्दा अपचा-याचे लेखी निवेदन प्राप्त झाले नाही. त्यामुळे त्यांचे याप्रकरणी काहीही म्हणणे नाही, असे गृहीत धरून पुढील कार्यवाही करण्यात आली.

५. ज्याअर्थी, शिस्तभंगविषयक प्राधिकाऱ्यांनी श्री. अढाऊ यांच्यावर बजावण्यात आलेला दोषारोप सिध्द होत असल्याचे सकारण कळवून, त्यावर त्यांचे बचावाचे लेखी निवेदन सादर करण्याबाबत कळविले होते. तथापि, श्री. अढाऊ यांना वाजवी संधी देऊनही त्यांचे लेखी निवेदन शासनास प्राप्त झाले नाही. त्यामुळे याप्रकरणी त्यांचे काहीही म्हणणे नाही, असे गृहीत धरून श्री. अढाऊ यांच्याविरुध्द " महाराष्ट्र नागरी सेवा (निवृत्तिवेतन) नियम, १९८२ मधील नियम २७ नुसार त्यांच्या सेवानिवृत्ति वेतनातून दरमहा १०% (दहाटक्के) इतकी रक्कम५ (पाच) वर्षासाठी कपात करण्यात यावी" ही शिक्षा बजावण्याबाबत त्यांना दि.५.५.२०१४ च्या दुसरी कारणे दाखवा नोटीशीन्वये कळवून, त्यावर त्यांना लेखी निवेदन सादर करण्याबाबत कळविण्यात आले होते. त्यावर श्री. अढाऊ यांनी दि.२३.५.२०१४ च्या पत्रान्वये निवेदन सादर केले. सदर निवेदन विचारात घेऊन, सामान्य प्रशासन विभाग व महाराष्ट्र लोकसेवा आयोगाच्या सहमतीने शासनाने श्री. अढाऊ यांना कारणे दाखवा नोटीशीन्वये कळविण्यात आलेली शिक्षा कायम ठेवण्याचा निर्णय घेतला आहे.

Against order dated 02.06.2015 the applicant preferred appeal (Annexure A-10). It was dismissed by order dated 06.10.2016 (Annexure A-12). The Appellate Authority observed-

चौकशी अधिकाऱ्यांनी काढलेला निष्कर्ष शिस्तभंगविषयक प्राधिकारी म्हणून शासनाने अमान्य करून अपीलार्थीवर दाखविण्यात आलेला दोषारोप सिद्ध होत असल्याने त्यावर बचावाचे लेखी निवेदन सादर करण्याबाबत कळविण्यात आले होते. तथापि, अपीलार्थी यांना बचावाची संधी देऊनही त्याचे लेखी निवेदन शासनास प्राप्त झालेले नसल्याने अपीलार्थी विरुद्ध महाराष्ट्र नागरी सेवा (निवृत्तीवेतन) नियम १९८२ मधील नियम २७ नुसार त्यांच्या सेवानिवृत्ती वेतनातुन दरमहा १०% (दहाटक्के) इतकी रक्कम कपात करण्याबाबत शिक्षा बजावण्यात आलेली आहे. सामान्य प्रशासन विभाग व महाराष्ट्र लोकसेवा आयोगाच्या सहमतीने सदर शिक्षा कायम ठेवण्याचा निर्णय घेण्यात आलेला आहे.

After sanction was accorded by M.P.S.C. order dated 22.06.2018 (Annexure A-13) was passed by respondent no.1 observing *inter alia* as follows-

६. ज्याअर्थी, श्री. अढाऊ यांनी शासनाच्या वरील दिनांक ०२.०६.२०१५ च्या आदेशाविरुद्ध मा. राज्यपाल महोदयांकडे दि.१८.७.२०१५ च्या पत्रान्वये अपील दाखल केले होते. मा. राज्यपालांच्या सचिवांनी त्यांच्या दि.५.२.२०१६ च्या अर्धशासकीय पत्रान्वये प्रस्तुत प्रकरणी अपिलीय प्राधिकारी म्हणून मा. मंत्री, पाणीपुरवठा व स्वच्छता यांना प्राधिकृत करण्यात आले होते. त्यानुसार मा. मंत्री महोदयांनी दि.१०.५.२०१६ रोजी

दुपारी १ वाजता सुनावणी आयोजित केली होती. सुनावणीच्या अनुषंगाने मा. मंत्री महोदयांनी दि.०६.१०.२०१६ रोजी आदेश पारित केले असून, सदर आदेशान्वये श्री.डी.व्ही.अढाऊ यांचे अपील फेटाळण्यात आले असून, शासनाचे दि.०२.०६.२०१५ चे आदेश कायम केले आहेत. सदर आदेशास महाराष्ट्र लोकसेवा आयोगाने त्यांच्या संदर्भाधीन क्र. ४ येथील दिनांक ०९.०४.२०१८ च्या पत्रान्वये सहमती दर्शविली आहे.

८. त्याअर्थी, आता शासन महाराष्ट्र नागरी सेवा (निवृत्तिवेतन) नियम, १९८२ च्या नियम २७ मधील तरतुदीनुसार "महाराष्ट्र नागरी सेवा (निवृत्तिवेतन) नियम, १९८२ मधील नियम २७ नुसार, श्री.डी.व्ही.अढाऊ यांच्या सेवानिवृत्ति वेतनातून दरमहा १०% (दहाटक्के) इतकी रक्कम (पाच) वर्षासाठी कपात करण्यात यावी" ही शिक्षा अपीलाअंती कायम करण्यात येत आहे.

In the meantime, on 30.11.2013 the applicant had retired on superannuation. In these facts direction is required to be issued to the respondents to release his pensionary benefits without delay, and quash and set aside the impugned orders. Hence, this O.A..

3. Stand of respondents 1 to 3 is that proper opportunity of hearing was given to the applicant, there was no procedural irregularity in conducting departmental enquiry and considering limited scope of judicial review interference by this Tribunal is not warranted.

4. First contention of the applicant is that the disciplinary authority did not record any reasons while differing from the Enquiry

Officer. His second contention is that the disciplinary authority did not give him proper opportunity of hearing. According to him, for these reasons the enquiry stood vitiated. In support of this submission reliance was placed on **Yoginath D. Bagde Vs. State of Maharashtra and Another (1999) 7 Supreme Court Cases 739 decided on 16.09.1999**, wherein it is held-

Difficulties have arisen in all those cases in which the enquiring authority has recorded a positive finding that the charges were not established and the delinquent officer was recommended to be exonerated, but the disciplinary authority disagreed with those findings and recorded its own findings that the charges were established and the delinquent officer was liable to be punished. This difficulty relates to the question of giving an opportunity of hearing to the delinquent officer at that stage. Such an opportunity may either be provided specifically by the rules made under Article 309 of the Constitution or the disciplinary authority may, of its own, provide such an opportunity. Where the rules are in this regard silent and the disciplinary authority also does not give an opportunity of hearing to the delinquent officer and records findings different from those of the enquiring authority that the charges were established, "an opportunity of hearing" may have to be read into the rule by which the procedure for dealing with the enquiring authority's report is provided principally because it would be contrary to the principles of natural justice if a delinquent officer, who has already been held to be "not guilty" by the enquiring authority, is found "guilty" without being afforded an opportunity of hearing on the basis of the same evidence and material on which a finding of "not guilty" has already been recorded.

5. So far as first contention of the applicant is concerned, learned P.O. invited my attention to following portion of communication dated 01.10.2010 (Annexure A-4)-

चौकशी अधिकारी यांनी काढलेला निष्कर्ष, पुरावे व साक्षीदाराच्या साक्षीवर आधारित आहे. तथापि, साक्षीदाराची साक्ष पाहता साक्षीदाराने साक्षात "केलेली खरेदी वित्तीय नियमानुसार योग्य आहे" असे म्हटले आहे. त्याचे हे म्हणणे ढोबळमानाने म्हटल्याचे निदर्शनास येत आहे. कारण, उलटतपासणीत घेतलेल्या साक्षीतील मुद्दा क्र.४ मध्ये स्पष्ट म्हटले आहे की, तफावत काढण्याबाबत संचालक / उपसंचालक यांचे आदेश होते. परंतु, नियमाबाबत मला निश्चित सांगता येणार नाही. याबाबीवरून हे स्पष्ट होत आहे की, याप्रकरणी महाराष्ट्र कोषागार नियम २८९ मधील तरतुदीचा विचार करण्यात आलेला नाही. सबब, चौकशी अधिकारी यांचा निष्कर्ष संयुक्तिक नाही.

Aforequoted portion shows that reasons were recorded by the Disciplinary Authority as to why and on what basis he was differing from the findings recorded by Enquiry Officer. This being the position, first contention of the applicant cannot be accepted.

6. Second contention of the applicant is that no proper opportunity was given to him to rebut conclusion reached by the disciplinary authority. I have quoted relevant portions of orders passed by the Disciplinary Authority as well as the Appellate Authority. Both of them observed that the applicant had not given any reply to

communication dated 01.10.2010. This conclusion is contrary to record. The applicant had submitted reply dated 18.10.2010. Thereafter, he had submitted reply dated 01.02.2011. So far as reply dated 18.10.2010 is concerned, the respondents have pleaded as follows-

It is submitted that it is an admitted position that the applicant submitted his representation dated 18.10.2010 to the respondent no.1. However, considering the reasons cited in the letter dated 01.10.2010 (explained in the above para), the explanation was not taken into consideration.

So far as reply dated 01.02.2011 is concerned, the applicant has pleaded as follows-

e) Applicant submits that Respondent No.1, however vide communication dated 18.11.2011, observed that applicant request for time to reply to communication dated 01.10.10 is to be filed within 7 days. This communication is received by applicant on 01.02.11. Immediately on dated 01.02.11, the applicant submitted his explanation & same is sent by registered post on 03.02.11. A copy of reply dated 01.02.11 addressed to Respondent No. 1 & 2 are annexed as Annexure A-6 & A-7.

(Quoted as it is)

Reply of the respondents to this pleading of the applicant is as follows-

11. As to Para No.6-(e): It is submitted that the contents raised by the applicant herein are not clear and/or these respondents states that the applicant herein is given chronology of events/correspondents, which may be a matter of fact.

(Quoted as it is)

This reply does not satisfactorily traverse pleading of the applicant that he had submitted reply dated 01.02.2011 as well. Again with covering letter dated 30.06.2014 (Annexure A-8) the applicant had submitted copy of his reply dated 18.10.2010. The Disciplinary Authority passed order imposing punishment on 02.06.2015. It stated that no reply / explanation was received from the applicant [to communication dated 01.10.2010]. The Disciplinary Authority ought to have considered replies dated 18.10.2010 and 01.02.2011, and then recorded his findings. This was not done. The Appellate Authority also did not consider these replies and recorded reasons identical to those which were recorded by the Disciplinary Authority. Thus, the applicant was deprived of proper opportunity of rebutting conclusions drawn by the Disciplinary Authority by communication dated 01.10.2010. Consequently, orders dated 02.06.2015 (Annexure A-9), 06.10.2016 (Annexure A-12 (a) on PP.43 to 47) and 22.06.2018 (Annexure A-13) are quashed and set aside and the matter is remanded to the Disciplinary Authority to proceed further with the enquiry from the stage of communication dated 01.10.2011. Proper opportunity shall be given to the applicant to rebut contents of communication dated 01.10.2010 and his replies dated 18.10.2010 and 01.02.2011 shall be considered before

drawing conclusions. The enquiry shall be complete expeditiously. The O.A. is allowed in these terms with no order as to costs.

(M.A.Lovekar)
Member (J)

Dated – 14/02/2024
rsm.

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

Name of Steno : Raksha Shashikant Mankawde

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

Judgment signed on : 14/02/2024.

and pronounced on

Uploaded on : 15/02/2024.