

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 73 / 2017 (S.B.)

Dr. Yoganand Marotrao Kawre,
Aged about 65 years, Occ. Retired Medical Officer,
R/o Yogshem Plot No. 1260, Vaishali Nagar,
Binaki Layout, Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
Through Hon'ble Minister of Transport,
Maharashtra State,
Mantralaya, Mumbai.
- 2) The State of Maharashtra, through its Secretary Public Health
Department, Mantralaya, Mumbai-32.
- 3) The Director of Health Services, Mumbai.
- 4) The Dy. Director of Health Services, Nagpur Division, Nagpur.
- 5) District Health Officer, District Health Department,
Zilla Parishad, Nagpur.

Respondents

Shri G.G.Bade, the Id. Advocate for the applicant.

Shri H.K.Pande, the Id. P.O. for the respondent nos. 1 to 4.

Shri A.Y.Kapgate, the Id. counsel for the respondent no. 5.

Coram :- Hon'ble Shri Shree Bhagwan, Vice Chairman.

JUDGMENT

Judgment is reserved on 13th August, 2021.

Judgment is pronounced on 03rd Sep., 2021.

Heard Shri G.G.Bade, the Id. counsel for the applicant and Shri H.K.Pande, the Id. P.O. for the Respondent nos. 1 to 4 and Shri A.Y.Kapgate, the Id. counsel for the respondent no. 5.

2. The applicant is challenging the order dated 16/10/2015 (A-1, Pg. No. 10) passed by the respondent no. 1 and so also order dated 18/11/2016 (A-2, Pg. No. 13) passed by the respondent No. 1 in appeal before the Hon'ble Governor, Maharashtra by virtue of which punishment of withholding of 18% from his pension permanently and further amount of Rs. 1283/- is to be recovered from the applicant.

3. That, the applicant came to be appointed as Medical Officer with the respondent department in the year 1987 and applicant came to be posted to various place during his service tenure and for a period from October, 1990 to June, 1993 applicant was posted to Primary Health Center at Kodameli, Tah: Mauda, Distt: Nagpur.

4. While working at Mauda, applicant was charged for misguiding the Government while showing family planning operation been done whereas operation was not done and preparation of forged documents and misappropriation of amount by Rs. 1283/- by preparing forged documents. Applicant was served chargesheet vide order dated 18.06.1996 (A-3, Pg. No. 17) and D.E. was started under Section 8 of M.C.S. (Discipline and Appeal) Rule, 1979 following two charges were leveled against the applicant as per pg. no. 19, which are below:-

"ckc & , d

mDr MKWok; - , e-dkoj] gs o9kdh; vf/kdkjh Eg.kuu vkDDVksj 1990 rs tuu 1993 g; k dkyko/khe/; s dke djhr vl rkuk dV/c fu; kst u 'kL=fdz, kps [kk/snLr, ot r; kj d: u

यककककक; क 'कल=fdz; क उ djrk R; क dY; कpsn'kToys vlf.k 'ककल ukph fn'कककककक दस्य- o v'कक
 i zdkjsMkklkkojs; ककह egkj"V^aukxjh I डक ¼orZknd½ fu; e 1979 P; क fu; e 3 pk Hkx dsyk-
 कक & नकु
 दक fu; कstu 'कल=fdz; ककरps [कक/snLr, डt r; कज d: u 'ककल dh; jDde : lk; s1283@&
 ¼ckjk'ks =; क, कkh QDr½ pk mi gj dsyk- o v'कक i zdkjsegkj"V^aukxjh I डक ¼orZknd½ fu; e
 1989 P; क fu; e 3 pk Hkx dsyk-

5. The enquiry officer conducted enquiry and enquiry report was submitted vide letter dated 11.01.1999 (A-4, Pg. No. 25 to 44, both inclusive); on pg. no. 44 enquiry officer has submitted that both the charges are proved against the applicant. Respondents issued show cause notice dated 07.06.2013 (A-7, Pg. No. 54) with proposed punishment to the applicant and asked to reply within fifteen days. Applicant submitted reply dated 14.08.2013 as per (A-8, Pg. No. 55 to 60). After receipt of reply respondents issued punishment order in D.E. on 16.10.2015 (A-1, Pg. Nos. 10 to 12) and awarded following punishment:-

"Mkklk; -, e-dkoj] I डकfuorR] rRdkyhu oSkdh; v f/kdkjh] i कककfed vkjkk; ककzकककककक-
 ft- ukxi j ; कक; क I डकfuorR orukru njegk 18 i fr'kr brdh jDde dk; eLo: ih di kr
 dj.; kr ; कक- r l p R; कक; क I डकfuorR orukru : lk; s 1283@& ¼ckjk'ks =; क, कkh : i ; s
 QDr½ brD; कjdepth , djdehol yh dj.; kr ; कक"

Applicant preferred appeal before Hon'ble Governor, which was heard by Hon'ble Minister of other Department on 18.11.2016 and appeal was rejected. The order dated 16.10.2015 by respondent no. 1 was confirmed.

6. A criminal case was also registered against the applicant vide criminal case no. 305/1998 (A-6, Pg. No. 48) Under IPC 409, 420, 468 & 471. The Id. Chief Judicial Magistrate Nagpur passed the order in said

criminal case on 28.10.2005, the operative part of order is on pg. no. 53 which is below:-

*"Accused Dr. Yoganand Marotrao Kaware r/o Nagpur is hereby acquitted Under Section 248 (1) of Cr.P.C. of offence punishable under section 409, 420, 468 & 471 of I.P.C.
His bail bond stands cancelled."*

In para no. 9 of the judgment on pg. no. 52 following observations have been noted:-

"In spite of sufficient opportunities, prosecution failed to examine informant. Addl. District Health Officer Shri D.J.Dhande as well as Dr. S.S.Gode, other witnesses, panch and I.O. which is fatal to the prosecution. The chain of evidence is not completed. Prosecution failed to examine the material witnesses on record and filed evidence close pursis Exh. 22. There is no iota of evidence against the accused."

7. The respondents have filed their reply on 12.10.2017 and in para no. 10 they have mentioned about the acquittal of applicant in Criminal Case no. 305/1998 by the order dated 28.10.2005 passed by the Ld. Chief Judicial Magistrate, Nagpur. The contention of the respondents is that the acquittal was not Hon'ble but the same was given to applicant as benefit of doubt. In the same para, respondents have also mentioned that in Criminal proceedings offences have to be proved beyond all reasonable doubt whereas in departmental proceedings, a strict rules of evidence act do not apply and nature of departmental proceedings is preponderance of probabilities.

8. It is crystal clear that order of Trial Court was passed on 28.10.2005 and both impugned orders i.e. first by respondent no. 1 was passed on 16.10.2015 and order in appeal was passed on 18.11.2016. It means respondents were well aware about the facts disclosed in Criminal Case before the Hon'ble Court and before passing the punishment order they had considered the proceedings taken place before Trial Court. As submitted by respondents, all the procedure of D.E. prescribed as per M.C.S. (Discipline and Appeal) Rules, 1979 have been followed and applicant was given all the chances for defense and after considering applicant's defense representation dated 14.08.2013 (A-8, Pg. Nos. 55 to 60).

9. The Bench has also perused the Judgment given by **Hon'ble Supreme Court in the case of Shashi Bhushan Prasad Vs. Inspector General, Central Industrial Security Force and Ors., Civil Appeal No. 7130 of 2009 decided on 01.08.2019, reported in (2019) 2 Supreme Court Cases (L&S) 527, (2019) 7 Supreme Court Cases 797**. The Bench also examined **Hon'ble High Court Bombay, Bench at Nagpur Judgment in W.P. No. 2301 of 2013 decided on 09.01.2017 in case of Ramchandra Bapusaheb Desai Vs. Maharashtra State Electricity Distribution Company LTD.**

10. By above discussions, it is clear that respondents have followed the procedure of D.E. and considering all the facts including opinion of Hon'ble Court the decision has been taken by respondents and the same has been confirmed in appeal by Hon'ble Governor, State of Maharashtra. In this situation, the Bench does not find to interfere in the impugned order dated 16.10.2015 (A-1, Pg. No. 10) and order in appeal dated 18.11.2016 (A-2, Pg. No. 13).

11. In view of above, following order:-

ORDER

A. O.A. is dismissed.

B. No order as to costs.

Vice Chairman

Dated :- 03/09/2021.

APS

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

Name of Steno	:	Akhilesh Parasnath Srivastava.
Court Name	:	Court of Hon'ble Vice Chairman.
Judgment signed on and pronounced on	:	03/09/2021.
Uploaded on	:	03/09/2021.