MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO. 73/2017 (D.B.)

Dr.Yoganand Marotrao Kawre,
Aged about : 65 years, Occu : 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 32.

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 M.M.Sudame, Ld. Counsel for the applicant.
Shri H.K.Pande, Ld. P.O. for the respondents 1 to 4.
Shri A.P.Sadavarte, Ld. Counsel for the respondent no.5.

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

Dated: - 13th December 2022.

JUDGMENT

Per :Member (J).

Judgment is reserved on 6th December, 2022.
Judgment is pronounced on 13th December 2022.

Heard Shri M.M.Sudame, learned counsel for the applicant, Shri H.K.Pande, learned P.O. for the respondents 1 to 4 and Shri A.P.Sadavarte, learned counsel for the respondent no.5.

2. Facts leading to this O.A. are as follows.

At the material point of time the applicant was working as a Medical Officer, P.H.C. Kodhamendi, District Nagpur. He was served with a charge sheet dated 18.06.1996 (Annexure A-3). Following charges were laid against him-

बाब - एक

उक्त डॉ.वाय.एम.कावरे, हे वैद्यकीय अधिकारी म्हणून ऑक्टोबर १९९० ते जून १९९३ हया कालावधीमध्ये काम करीत असतांना कुटुंब नियोजन शस्त्रक्रियांचे खोटे दस्तऐवज तयार करुन लाभार्थीच्या शस्त्रक्रिया न करता त्या केल्याचे दर्शविले आणि शासनाची दिशाभूल केली. व अशाप्रकारे डॉ.कावरे यांनी महाराष्ट्र नागरी सेवा (वर्तणूक) नियम १९७९ च्या नियम ३ चा भंग केला.

बाब - दोन

कुटुंब नियोजन शस्त्रक्रियेबाबतचे खोटे दस्तऐवज तयार करुन शासकीय रक्कम रुपये १२८३/- (बाराशे त्र्याऐंशी फक्त) चा उपहार केला. व अशा प्रकारे महाराष्ट्र नागरी सेवा (वर्तणूक) नियम १९७९ च्या नियम ३ चा भंग केला.

The Inquiry Officer recorded evidence and dealt with the charges. So far as the first charge was concerned, he held-

मुल्यमापन व निष्कर्ष-

अपचारी अधिकारी डॉ.वाय.एम.कावरे हे प्राथमिक आरोग्य केंद्र कोदामेंढी जिल्हा नागपूर येथे वैद्यकीय अधिकारी म्हणून कार्यरत असतांना फेब्रुवारी आणि मार्च १९९२ मध्ये करण्यात आलेल्या कुटुंब नियोजन शस्त्रक्रियेपैकी चौकशी अंती एकूण १० केसेस बोगस असून त्यापैकी एक केस पुरुष शस्त्रक्रियेची आहे. हया १० केसेसबाबत कुटुंब नियोजन शस्त्रक्रियेबाबत खोटे कागदपत्र तयार करुन व लाभार्थीच्या शस्त्रक्रिया न करता त्या केल्याचे दर्शवुन शासनाची दिशाभूल केली आहे असा दोषारोप आहे. सदर प्रकरणी श्री.सुरेश के.सराफ, तत्कालीन अप्पर पोलीस अधिक्षक ५(२) ॲन्टी करप्शन ब्युरो, नागपूर यांनी प्राथमिक चौकशी करुन त्यांनी त्यांचा अहवाल गोपनीय पत्र क्रमांक ई/एल.ए./५/९२-(४४)/१९९४, दिनांक ३०.३.९४ अन्वये महासंचालक, ॲन्टी करप्शन ब्युरो, महाराष्ट्र राज्य, मुंबई यांचेकडे सादर केला होता. याच अहवालावर उपरोक्त दोषारोप आधारीत आहेत. सदरचा अहवाल, प्रस्तुत प्रकरणातील चौकशीचे अभिलेखात एक्झाबिट पी.१० म्हणून उपलब्ध आहे. अपचारी अधिकारी हे प्राथमिक आरोग्य केंद्र कोदामेंढीचे प्रभारी वैद्यकीय अधिकारी होते. त्यामुळे त्यांची जबाबदारी कुटुंब नियोजन शस्त्रक्रिया करवून घेण्यापुरतीच मर्यादित होती असे म्हणता सेणार नाही. फॉर्मस् भरण्यात त्यांचा सहभाग नाही. हे काम रुग्णांच्या सांगण्यानुसारच सिस्टर प्रवर्तक, लिपीक व इतर कर्मचारी

यांचे स्तरावरच केले जाते. तसेच रुग्णांना भुगतान करण्याची कार्यवाही लिपीक स्तरावरच करण्यात येत असल्यामुळे हयाबाबतचे संपुर्ण दायित्व संबंधित लिपीक अथवा कर्मचा-यावर राहते व त्यात त्यांचा कोणताही सहभाग असूच शकत नाही असा अपचारी अधिकारी यांनी केलेला युक्तीवाद निराधार व तर्कावर आधारीत असल्यामुळे तो दखलपात्र ठरत नाही. प्रत्यक्ष कुटुंब नियोजन शस्त्रक्रिया न करता त्या करण्यात आल्या असे खोटे दर्शवुन त्याबाबत तयार करण्यात आलेल्या खोटया कागदपत्राकरिता अधिनस्थ संबंधित कर्मचारी जबाबदार आहेत हे भासविण्याचा अपचारी अधिकारी यांनी निष्फळ प्रयत्न केलेला आहे. परंतु आरोपात नमुद बोगस १० केसेसबाबत त्या ख-या असल्याचे संबंधात त्यांनी युक्तीवादात कोणतेही भाष्य न करता याबाबत कोणतेही पुरावे चौकशीत सादर केले नाहीत. एकंदरीत दोषारोपांत नमुद एकुण १० व्यक्तींच्या ज्यात ९ महिलांचा समावेश आहे त्यांच्या प्रत्यक्षात कुटुंब नियोजन शस्त्रक्रिया न करता त्या करण्यात आल्याबदद्ल खोटी कागदपत्रे तयार करुन व त्यावर शस्त्रक्रिया करणारे डॉक्टर, मतप्रर्वतक यांच्या फॉर्मवर सहया होऊन तसेच प्राथमिक आरोग्य केन्द्र कोदामेंढी येथील संबंधित कनिष्ठ लिपिक यांचे मार्फत पैसा वाटप केल्याबाबत खोटया नोंदी रजिस्टरमध्ये घेऊन, अपचारी अधिकारी यांनी शासनाची दिशाभूल केली हे चौकशीत निर्विवाद स्पष्ट होत असल्याने हा दोषारोप निसंदिग्धपणे पुर्णत: सिध्द होतो.

So far as the second charge was concerned, he held-

<u>मुल्यमापन व निष्कर्ष-</u>

खोटे दस्तावेज तयार करुन शासकिय रक्कम रुपये १२८३/- चा अपहार केला अशी आरेपीत बाब आहे. कुटुंब कल्याण शस्त्रक्रिया केल्यानंतर स्त्री लाभार्थीस रुपये १३०/- व पुरुष लाभार्थीस ११०/- याप्रमाणे शासनातर्फे मोबदला दिला जातो. सदर नियमानुसार, आरोपात नमुद १० बोगस केसेसच्या संबंधात ज्यामध्ये एक केस

पुरुष शस्त्रक्रियेची आहे. एकुण रुपये १२८३/- चे भुगतान केल्याचे दर्शविले आहे. दोषारोप बाब क्रमांक १ चे '' मुल्यमापन व निष्कर्ष '' या सदरांत केलेल्या विवेचनानुसार हया १० व्यक्तिंच्या, ज्यामध्ये ९ महिलांच्या कुटुंब नियोजन शस्त्रक्रियांचा समावेश आहे. प्रत्यक्षात त्यांचेवर कुटुंब नियोजन शस्त्रक्रिया न करता त्या करण्यात आल्याबदद्ल खोटी कागदपत्रे तयार करुन व त्यावर शस्त्रक्रिया न करता त्या करण्यात आल्याबदद्ल खोटी कागदपत्रे तयार करुन त्यावर शस्त्रक्रिया करणारे डॉक्टर, मतप्रवर्तक यांच्या फॉर्मवर सहया घेऊन प्राथमिक आरोग्य केंद्र कोदामेंढी येथील संबंधित कनिष्ठ लिपिक यांचेमार्फत उपरोक्त दराप्रमाणेच मोबदल्याची रुपये १२८३/- एवढी रक्कम वाटप केल्याबदद्लच्या खोटया नोंदी रजिस्टरला घेतल्याचे स्पष्ट झाले आहे. शासनाचे साक्षीदार सौ.प्रमिला रामू कडू (पी. डब्यु.१), श्रीमती शारदा निवृत्तीनाथ वाघमारे (पी.डब्यु.२), श्री.जयराम धोंडबाजी मस्के (पी.डब्यु.४), श्री.सतीश लक्ष्मण मेहुणे (पी.डब्यु.५), देवराव घुसाराम नागपुरे (पी.डब्यु.६), श्री. वासुदेव श्रीरामजी ढोमणे (पी.डब्यु.८) यांनी त्यांचे साक्षीत त्यांनी पुर्वी दिलेले बयान बरोबर असल्याचे कबूल केले. पी.डब्लु.१ हिने ज्या व्यक्तींनी शस्त्रक्रियेच्या फॉर्मवर सहया केल्या त्यांनाच भुगतान झाले किंवा नाही याबदद्ल सांगु शकत नाही असे उलटतपासणीत सांगीतले. पी.डब्लु.२ हिने शस्त्रक्रियेसाठी मदत केल्याबदद्ल फॉर्मवर तिचे नाव कोणीतरी लिहले व त्यांची सही घेतली. परंतु १ रुपया मिळाला नाही असे उलटतपासणीत सांगितले. पी.डब्लु.३ श्री.नरहरी लच्छीराम येऊतकर यांनी शस्त्रक्रियेसाठी मदत केल्याबदद्ल १ रुपया मिळाल्याबाबत सही दुस-याने केली आहे असे उलटतपासणीत सांगीतले. त्याचप्रमाणे पी.डब्लु.५, सतीश मेहुणे पी.डब्लु. ६, श्री.देवराव नागपुरे यांनीही त्यांना १ रुपया मिळाला नसल्याचे उलटतपासणीत सांगितले. एकंदरीत आरोपात नमुद १० केसेसच्या संबंधात खोटे दस्तऐवज तयार करुन ९ महिला लाभार्थी व १ पुरुष लाभार्थी यांना मोबदल्याबाबत एकुण रुपये १२८३/- एवढया रकमेचे खोटे वाटप दाखवून शासकिय रकमेचा अपहार

केल्याचे व त्याकरिता प्रभारी वैद्यकिय अधिकारी म्हणून अपचारी अधिकारी जबाबदार असल्याचे स्पष्ट होते. सादरकर्ता अधिकारी यांनी त्यांचे दिनांक १८.११.९८ चे लेखी टाचणांत, अपचारी अधिकारी यांचे कार्यालय प्राथमिक आरोग्य केंद्र कोदामेंढी असे नमूद करण्याऐवजी अनावधानाने तुलतुली प्रकल्प उपविभाग क्रमांक २ दवंडी असे नमूद केले आहे. त्यामुळे दोषारोपावर व त्याअनुषंगाने लेखी युक्तीवादावर काहीही फरक पडत नसल्यामुळे अपचारी अधिकारी यांचा आरोप दखलपात्र ठरत नाही. तसेच अपचारी अधिकारी यांनी दिनांक ९.१२.९८ रोजी सादरकर्ता अधिकारी यांचे लेखी टाचणांवर पुर्नतपासणीकरिता कोणतीही लेखी स्वरुपात मागणी केली नाही. सादरकर्ता अधिकारी यांचे लेखी टाचणावर अपचारी अधिकारी यांनी आपले बचावाचे अंतिम निवेदन सादर केलेले आहे. तेव्हा पुर्नतपासणीचा प्रश्नच उद्भवत नाही व तशी नियमांत तरतुद नाही. अशारितीने अपचारी अधिकारी यांचेवर लावण्यांत आलेला हा दोषारोप देखिल निसंदिग्धपणे सिध्द होतो.

He submitted his report dated 11.01.1999 (Annexure A-4) to the Disciplinary Authority. A show cause notice dated 29.06.1999 was issued to the applicant to which he gave a reply dated 29.11.1999 (Annexure A-5). By judgment dated 28.10.2005 (Annexure A-6) the applicant was acquitted of charges under Sections 409, 420, 468 and 471 of I.P.C. The applicant retired on superannuation on 31.10.2010. The show cause notice dated 07.06.2013 (Annexure A-7) was issued to him as to why an amount of Rs.1283/- be not recovered from his pensionary benefits and why 18% from his pension be not deducted permanently. To this show

caused notice he gave a reply dated 14.08.2013 (Annexure A-8). The Disciplinary Authority, by order dated 16.10.2015 (Annexure A-1) imposed the following punishment-

> शासन निर्णय :-
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> महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम, १९७९ नियम ६ अन्वये प्रदान केलेल्या शक्तीचा वापर करुन ''डॉ.वाय.एम.कावरे, सेवानिवृत्त, तत्कालीन वैद्यकीय अधिकारी, प्राथमिक आरोग्य केंद्र, कोंदामेंढी, जि.नागपूर यांच्या सेवानिवृत्त वेतनातून दरमहा १८% इतकी रक्कम कायमस्वरुपी कपात करण्यात यावी. तसेच त्यांच्या सेवानिवृत्ती वेतनातून रुपये १२८३/- (बाराशे त्र्याऐंशी रुपये फक्त) इतक्या रकमेची एकरकमी वसूली करण्यात यावी.''

The applicant preferred appeal (Annexure A-12) which was rejected by the Appellate Authority by order dated 18.11.2016 (Annexure A-2). Hence, this O.A.

3. The impugned orders are assailed by the applicant on the following grounds-

1) The charge sheet was issued on 18.06.1996. The report of inquiry was submitted on 11.01.1999. On 31.10.2010 the applicant retired on superannuation. The second show cause notice was issued on 07.06.2013. The Disciplinary Authority passed the order of imposing punishment on 16.10.2015. The Appellate Authority confirmed the order of punishment on 18.11.2016. Thus,

there were laches in concluding the proceeding for which the respondent department was solely responsible.

2) The inquiry was initiated on the complaint presumably filed by one Devrao Nagpure. Before the Lokayukt said person, by submitting a letter (Annexure A-10), had disowned the authorship of the complaint made against the applicant. Thus, the complaint was anonymous. No cognisance of such complaint could have been taken in view of G.R. dated 25.02.2015 (at page 99) issued by the G.A.D., Government of Maharashtra.

3) The Disciplinary Authority erred by accepting conclusions reached by the Inquiry Officer which were based on incorrect appreciation of evidence led before him.

4) The Appellate Authority simply endorsed the conclusions drawn by the Disciplinary Authority without independently assessing the material / merits of the matter.

5) The orders the Disciplinary as well as Appellate Authority are non-speaking orders which have resulted in miscarriage of justice.

6) The applicant was B.A.M.S. He could not have carried out family planning operation in any case. None of the witnesses examined by the department stated that the applicant had misappropriated any amount or prepared false documents. Dr. Meshram who certified having carried out family planning operations was the main person responsible as was concluded by the A.C.B.

4. In their reply at pp.88 to 95 respondents 2 to 4 have averred that charges against the applicant were serious in nature and opportunity was given to the applicant to adequately meet the same which he had duly availed. The inquiry was conducted strictly in accordance with the Rules. There was evidence to prove the charges. The Inquiry Officer accordingly held the charges to be proved. The Disciplinary Authority concurred with the findings recorded by the Inquiry Officer. A show cause notice was issued to the applicant as to why the proposed punishment be not imposed. He gave a reply to the notice which was duly considered by the Disciplinary Authority before imposing the punishment. The punishment was commensurate with the gravity of the charges proved. The Appellate Authority agreed with the Disciplinary Authority and recorded brief reasons for such agreement. Acquittal of the applicant in Criminal

Case was based on benefit of doubt and hence the same will not have any adverse impact on the contrary findings recorded in the Departmental Inquiry where the standard of proof is one of preponderance of probability. For all these reasons no interference with the impugned orders would be called for.

5. In his rejoinder at pp.96 to 98 the applicant has contended that in their reply respondents 2 to 4 have not explained why it took the department 19 years to pass the order of punishment, and solely on the ground of laches the impugned orders deserve to be quashed and set aside.

6. In his Return respondent no.1 has contended that as per the procedure stipulated in the Rules for imposing punishment on Gazetted Officer approval of M.P.S.C. was mandatory. In collecting the documents necessary for obtaining such approval / concurrence considerable time was consumed and thus, the delay was caused by administrative reasons.

7. According to the applicant, one Devrao Nagpure was named as the complaint and on whose complaint the departmental proceeding was initiated had later on submitted a letter before Lokayukt disowning having written such letter of complaint and consequently the complaint deserved to be treated as an anonymous complaint and

filed in view of various G.Rs. issued by the Government of Maharashtra. In support of this contention communication (Annexure A-10) is placed on record. This communication is not a letter submitted by Devrao Nagpure. It is a letter sent by the Office of Lokayukta to said Nagpure to substantiate allegations levelled by him against the applicant. Therefore, there is no substance in the contention of the applicant that the inquiry began on a complaint which was anonymous.

8. We have referred to the stand taken by respondent no.1 to explain laches. We find no substance in the same. It may be reiterated that charge sheet was served in the year 1996 and the Disciplinary Authority imposed the punishment in the year 2015.

9. It was submitted by Shri Sudame, learned Advocate for the applicant that the Inquiry Officer erred in holding that the charges against the applicant were proved because evidence to arrive at such conclusion was lacking / deficient.

10. The respondents, on the other hand have relied on the following rulings to contend that the findings of fact based on evidence cannot be upset by this Tribunal in exercise of limited powers of judicial review.

1. Deputy General Manager (Appellate Authority) & Ors. Vs. Ajai Kumar Srivastava (2021) 2 SCC 612. In this case it is held that in exercise of jurisdiction of judicial review, courts would not interfere with findings of facts arrived at in disciplinary proceedings except in case of malafides or perversity i.e. where there is no evidence to support such finding or finding is such that no reasonable man could arrive at. Where there is some evidence to support finding arrived at in departmental proceedings, same must be sustained.

In this case following observation in B.C. Chaturvedi vs. Union of India, (1995) 6 SCC 749 have been relied upon:-

"The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H.C. Goel, this Court held at SCR p. 728 (AIR p. 369, para 20) that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."

2. State of Andhra Pradesh & Ors. Vs. Chitra Venkata Rao (1975) 2 SCC 557. In this case it is held:-

"The High Court is not a Court of Appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter

which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226."

3. Shashi Bhushan Prasad Vs. Inspector General, Central Industrial Security Force & Ors. (2019) 7 SCC 797. In this case it is held:- "It is fairly well settled that two proceedings criminal and departmental are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on an offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service Rules. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. Even the rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused beyond reasonable doubt, he cannot be convicted by a Court of law whereas in the departmental enquiry, penalty can be imposed on the delinquent on a finding recorded on the basis of "preponderance of probability". Acquittal by the Court of competent jurisdiction in a judicial proceeding does not ipso facto absolve the delinquent from the liability under the disciplinary jurisdiction of the authority. This is what has been considered by the High Court in the impugned judgment in detail and needs no interference by this Court." 4.

Karnataka Power Transmission Corporation Limited Represented by Managing Director (Administration and HR) Vs. C. Nagaraju & Another (2019) 10 SCC 367. In this case it is held that acquittal by criminal court does not preclude departmental inquiry since these proceeding are entirely different, operate in different fields and have different objective. Disciplinary authority is not bound by the Judgment of criminal court where evidence produced in departmental inquiry is different from that produced in criminal trial.

It is further held:-

"The object of departmental inquiry is to find out whether the delinquent is guilty of misconduct under the conduct rules for the purpose of determining whether he should be continued in service. The standard of proof in a departmental inquiry is not strictly based on the rules of evidence. The order of dismissal which is based on the evidence before the inquiry officer in the disciplinary proceedings, which is different from the evidence available to the criminal court, is justified and needed no interference by the High Court."

5. Arthur Viegas Vs. MRF India Ltd., Goa & Ors. 2021 (6) Mh.L.J. 643. In this case it is held:-

"The jurisdiction of this court to interfere with the findings of fact is quite limited. Unless it is demonstrated that the findings are vitiated by perversity, normally it is not for this court to review the findings of fact. The contention based upon the acquittal by this court, was no

doubt formidable and that is the reason why acquittal orders were taken into account by me having regard to the principles laid down in M. Paul Anthony (supra), or G.M.Tank (supra). Further, as noted earlier, such matters have to be decided on their peculiar facts, and in the facts of the present, it cannot be said that dismissal of the petitioner was unfair, unjust, or oppressive. Ultimately, the object of criminal proceedings and domestic inquiries is quite different. That is the reason why the standard to be applied in criminal proceedings is that of proof beyond reasonable doubt and the standard to be applied in domestic inquiries is only that of a preponderance of probabilities."

11. Considering the parameters laid down in the above referred rulings this Tribunal finds that the findings of fact recorded by the Inquiry Officer, which we have reproduced above, and with which Disciplinary Authority agreed cannot be interfere with in exercise of limited powers of judicial review.

12. It was submitted by Advocate Shri Sudame that the punishment imposed against the applicant cannot be sustained. It is a matter of record that during pendency of departmental inquiry the applicant stood retired on superannuation on 31.10.2010. In support of aforesaid submission reliance is placed on the following observations in – ***Chairman/Secretary of Institute of Shri Acharya***

Ratna Deshbhushan Shikshan Prasarak Mandal, Kolhapur and another Vs. Bhujgonda B. Patil [2003 (3) Mh.L.J. 602.

> ***14. The fact that the proceedings are continued only to deal with the issue of reduction or withdrawal of pension is necessarily required to be made known to the employee even though there is no specific provision in that regard in Rule 27. The observations by the Apex Court in Brahm Datt Sharma's case are to the effect that the opportunity of hearing in that regard to the employee is necessary as any order of reduction or withdrawal of pension could affect the right of the employee to receive full pension. Principles of natural justice, therefore, need to be complied with in all the proceedings under Rule 27, to the extent that an opportunity of being heard must be offered to the employee before an order under Rule 27(1) is passed.***

This ratio will not help the applicant considering the fact that before imposing the impugned punishment show cause notice dated 7.6.2013 (Annexure A-7) was given to the applicant making him aware of the proposed quantum / nature of punishment.

13. The applicant has also relied on the following observations in ***Masuood Alam Khan-Pathan Vs. State of Maharashtra and others 2009 (5) Mh.L.J.68 .***

> ***The employee's right to pension being statutory right, the measure of deprivation must be correlative to or commensurate with the gravity of the grave misconduct or irregularity as it offends the right of assistance at the evening of his life as assured under Article 41 of the Constitution of India.***

These observations will certainly help the applicant in contending that the punishment of deduction of 18% from pension permanently is clearly disproportionate to the misconduct said to have been proved. In this case it is further held-

> ***The Hon'ble Supreme Court in SLP No. India 21000 of 1993 Om Kumar and others v. Union of has observed that the Court while reviewing punishment, if satisfied that Wednesbury principles are violated, it should, normally, remit the matter to the administrator for a fresh decision as to the quantum of punishment - Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the Courts, and in such extreme or rare cases, the Court can substitute its own view as to the quantum of punishment.***

We have considered the Wednesbury principle and so also we could lay our hand on the ruling of the Hon'ble Supreme Court in Bhagat Ram v. State of Himachal Pradesh reported in AIR 1983 SC 454. In this case, the Supreme Court held that,

> ***"it is equally true that the penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution.""***

The Apex Court in the case of Coimbatore District Central Co-operative Bank v. Coimbatore District Central Co-operative Bank Employees Association and another reported in (2007) 4 SCC 669 ruled that while determining the question of reasonableness and fairness on the part of the statutory authority the question must be considered having regard to the factual matrix in each case. It cannot be put in a straitjacket formula and must be considered keeping in view the doctrine of flexibility.

In the case of State of M.P. & Others v. Hazarilal (2008) 3 SCC 273, the Apex Court held that the legal parameters of judicial review have undergone sea change. Wednesbury principle of unreasonableness has been replaced by doctrine of proportionality. The observations made in a case where penalty imposed on a government servant was found to be disproportionate to the conduct which led to his conviction the Doctrine of proportionality was applied by the Court. The relevance of

these principles cannot be ignored while considering the case in hand.

In this case the loss caused to the Government is stated to be Rs.1283/-. Recovery of this amount in lumpsum forms the part and parcel of the impugned punishment. To this extent no fault could be found. Then comes the punishment of deduction of 18 % amount from pension permanently. Here, the doctrine of proportionality will come into play. The applicant was served with a charge sheet on 18.06.1996. The Disciplinary Authority imposed the punishment on 16.10.2015 i.e. more than 19 years after initiation of departmental inquiry. The applicant had retired on superannuation on 31.10.2010. Now, he must be aged more than 70 years. Considering all these circumstances the just and proper course would be to substitute our own view as to the quantum of punishment instead of remitting the matter to the Disciplinary Authority for appropriately scaling down the quantum of punishment. Taking into account the observation in para 22 in the case of Masood (Supra) ends of justice would be met if quantum of deduction from pension is scaled down to 6% from 18%. Hence, the order.

ORDER

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

The impugned orders dated 16.10.2015 (Annexure A-1) and 18.11.2016 (Annexure A-2) are modified and it is held that from the pension of the applicant deduction of 6% instead of 18% permanently is just and proper. Order of recovery of Rs.1283/- from pensionary benefits in lumpsum is maintained. The amount deducted in excess from monthly pension till December, 2022 shall be refunded to the applicant within three months from today. From the month of January, 2023 onwards there will be deduction of 6% from monthly pension of the applicant, permanently. No order as to costs.

(M.A.Lovekar)
Member (J)

(Shree Bhagwan)
Vice Chairman

Dated – 13/12/2022

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 Vice Chairman & Court of Hon'ble Member (J) .
Judgment signed on and pronounced on	:	13/12/2022.
Uploaded on	:	14/12/2022.