

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 749/2013

Shri. Kushal S/o. Daulatrao Purjelwar
40 years, Jog Galli, Shirke Road,
Navi Sukrawari, Mahal Nagpur

Applicant.

Versus

- 1) The State of Maharashtra,
through the Secretary, Department
of Home Affairs, Mantralaya,
Mumbai-32
- 2) Director General of Police
(Administration) State of Maharashtra
Mumbai.
- 3) Special Inspector General of Police,
State Reserve Police Force,
State of Maharashtra, Nagpur
- 4) Commandant, State Reserve
Police Force, Group No.4,
Nagpur Region, Nagpur

Respondents

Shri V.R.Thote, Ld. counsel for the applicant.
Shri V.A.Kulkarni, Ld. P.O. for the respondents.

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

Dated: - 05th April 2022.

PER- Member (J)

JUDGMENT

Judgment is reserved on 25th March, 2022.

Judgment is pronounced on 05th April, 2022.

Heard Shri V.R.Thote, learned counsel for the applicant and Shri V.A.Kulkarni, Ld. P.O. for the Respondents.

2. Case of the applicant is as follows :-

The applicant was appointed as an Armed Police Constable in S.R.P.F. at Nagpur. On 05.12.1998, one Sunil Kaithe gave a complaint against the applicant to respondent no.2, alleging that the applicant had demanded an amount of rupees 27,000/- by extending promise of a job. Later on, the applicant had undertaken to refund the amount by executing a bond on a Stamp paper. The Assistant Commandant conducted a preliminary enquiry and submitted a report (Annexure A-1) holding that there was substance in the allegations. Respondent no.4 issued a charge sheet to the applicant on 29.4.1999. Mr. Tiwari, Assistant Commandant was appointed as Enquiry Officer. Considering the nature of allegations the complainant could avail a remedy of Civil or Criminal nature. Thus, the very initiation of departmental enquiry was misconceived. On conclusion of enquiry, respondent no.4

issued a show cause notice dated 13.8.1999 (Annexure A-2) proposing punishment of dismissal. The applicant was not supplied with the report of enquiry officer by the disciplinary authority. His defence was seriously prejudiced thereby. On 14.9.1999 respondent no.4 passed the order (Annexure A-3) of dismissing the applicant. While passing this order, various grounds raised by the applicant in his reply to show cause notice were not considered at all. The applicant challenged the order of dismissal by filing an appeal (Annexure A-4) before respondent no.3. By order dated 12.01.2002 (Annexure A-5) respondent no.3 maintained the order passed by the disciplinary authority. On 5.3.2001, the applicant filed revision (Annexure A-6) before respondent no.2 against the order passed in appeal. By order dated 13.03.2002 (Annexure A-7), respondent no.2 dismissed the revision. The applicant was never served with the report of the enquiry officer. The enquiry was initiated though the complaint could avail a civil remedy. Principles of natural justice were not followed. The disciplinary authority, appellate authority as well as revisional authority mechanically confirmed the order passed by the enquiry officer without considering defence of the applicant.

The applicant challenged the order (Annexure A-7) before this Tribunal in O.A.289/2002. The O.A. was allowed on 1.11.2012

(Annexure A-8), the impugned orders were set aside, the respondents were directed to supply copy of the report of enquiry officer and they were further directed to reinstate the applicant. The applicant was reinstated by order dated 19.1.2013 (Annexure A-10). The applicant then received a copy of the report of enquiry officer (Annexure A-9). He submitted a detailed reply (Annexure A-11). The disciplinary authority, respondent no.4, passed order dated 8.4.2013 (Annexure A-12) dismissing the applicant. By order dated 29.8.2013 (Annexure A-13) respondent no.3 dismissed the appeal filed by the applicant. Respondent no.1, by order dated 16.6.2016 (Annexure A-14) maintained the order of dismissal. Hence, this application.

Reply of respondent no.4 is at pp.92 to 95. According to respondent no.4, the impugned orders were based on proper appreciation of evidence on record, proper opportunity of hearing was given to the applicant, thus, principles of natural justice were strictly adhered to, and for these reasons interference by this Tribunal was not called for.

3. The applicant has raised following grounds –

- A) None of the orders impugned in this application shows application of mind by the authorities.

- B) Principles of natural justice were not followed during the enquiry.
- C) There were material lacunae in the statements of witnesses regarding whether the applicant had, in fact, accepted money and if he had accepted it, timing and the place thereof.
- D) The most vital piece of the evidence relied upon by the department was the Bond allegedly executed by the applicant on a stamp paper undertaking to refund the amount. It was not satisfactorily proved during the enquiry that this document in fact bore the signature of the applicant. The original document was never tendered in evidence. It's copy ought not to have been read in evidence without an order permitting tendering of secondary evidence.

The charge against the applicant was –

nk\$kkjksi kckcr FkkMD; kr gdhxr %

I ikf'k 302 dsMh-iqtšyokj gs vi kjā kjhd vfhk; ku if'k{k.k dāz ukxiij ue.kpdr vl rkak ¼ l /; k vs dā uh jkT; jk[kho ikshl cy xV dēkad 4] ukxiij ½ ekgs l IVcj 1997 e/; s Jherh ešukckbz frydpan dšks egekMo.kh jkM rk-fgax.kk] ft-ukxiij fgpk ešyxk ukes l fuy frydpan dšks ; kl ukdjh ykou nrks Eg.ku #i ; s 27]000@& ¼v{kjh #-l Rrkohl gtkj QDr½ ?kršys o R; kyk ukdjh u ykork jDde Lo%rkP; k mi ; kškr vk.kyh- #i ; s 27]000@&ijr dj. ; kcnny Jherh ešukckbz frydpan dšks o frpk ešyxk okjokj rdknk d#u l qnk I ikf'k 302 dsMh-iqtšyokj ; kauh #i ; s ijr dšys ukgh- fnukad 16-05-2018 jksth Jherh

eukckbz frydpan dFks o Jh-l fuy frydpan dFkj Jh-fo'oukFks fxj/kkjhyky ed js vkf.k Jh-f'kokth nksyrjko iqt'iyokj gs loz ykd ,df=r gksAu likf'k 302 dsMh-iqt'iyokj ; kps M; qhps fBdk.kh ¼vikjã kjhd vfHk; ku if'k{k.k dñz ukxi j ½ ; Fks ; ou #i ; kph ekx.kh dš ; koj likf'k dsMh-iqt'iyokj ; kauh l kfxrys dh] #-20@&ps LViiiisj miyC/k ul Y; kus R; kauh #-10@&] #-10@&ps nku LViiiisj vkiyh vkbz Jherh eukckbz frydpan dFks fgps ukokus [kjsnh d#u Rojhr ijr vkys vkf.k R; koj likf'k dsMh-iqt'iyokj ; kauh #-27]000@& ?krys vl s dciw dsys vkgs R; k LViiiisj oj likf'k dsMh-iqt'iyokj vl s i.k fygys vkgs dh] 30 vkVksj ; k vknh gk fygu ?kryyk djkjuek dks kR; kgh iqs B. ; kr tjh vkyk rjh eh dks kR; kgh ifjLFkhrhr #-27]000@& ijr dj.kkj ukgh-

R; k djkj ukE; koj ¼1½ Jh-0gh-t-h-ed js vkf.k ¼2½ Jh- , l -Mh-iqt'iyokj ; kph l k{khkj Eg.kwu fnukadkl g Lok{kjh vkgs vkf.k nd jk LViiiisj fjDr vkgs

4. During the enquiry Smt.Mainabai Kaithe, Shri.Sunil Kaithe, Shri.Vishwanath Masoore (witness to execution of Bond by the applicant) and Shri. Shiwaji Purjelwar were examined. In addition to statements of these witnesses enquiry officer relied on the following documents-

- 1- l gk-l ek- ed ; ky ; ; kph fj i kVl dz562 @1998 fn-24-12-1998-
- 2- Jh-l fuy frydpan dFks eqi ksfga.kk ft-ukxi j ; kpk fn-05-12-1998 pk vtz
- 3- dkVl LViiiisj dækd 871 vkf.k 872 fn-16-05-1998 ps #-10@& 10@&
- 4- Lki kf'k 302 dsMh-iqt'iyokj ue.kwd vs da uh jkiki ks cy xV dz4 ; kpk tckc fn-07-12-1998-

The enquiry officer further stated in the report that the applicant which delinquent had not cited defence witnesses. He referred to the fact that the applicant had, however, submitted his statement of defence.

The enquiry officer framed points for determination, recorded reasons for findings on each of these points and concluded-

Pkkd' kh vf/kdkjh ; kpk vfHki k; %

vi pkjh ; kps l a/kr [krs foHkxh; pkd' khps fu; eki æk.ks dkedkt pkyfo.; kr vkys vl u R; kr vkrk i ; r l {k i gkok o dkxnsi =h i gk0; ko#u vi pkjhoj yko.; kr vkysys nks'kkjksi गणितीय पद्धतीने सिध्द झालेले आहेत. अपचारीचे varhe fuonukr dkgh [kkl uohu enns mi fLFkr dsysys ukgh- rjh R; kps varhe fuonukps dkVsdkj i .ks l gkuqkqh i wzd fopkj dj.; kr vkysys vkgs ; ko#u eh pkd' kh vf/kdkjh [kkyhyi æk.ks f'kQkj l djhr vkgs

It would be useful to narrate part of the chronology for the sake of clarity. After order was passed in O.A.no.289/2002, copy of report of enquiry officer was supplied to the applicant. Thereafter, the disciplinary authority considering say of the applicant and passed order of dismissal. While maintaining this order the appellate authority, respondent no.1, observed-

fu"d"lz % l nj i d j .kh vihykFkhz ; kph cktw , sdwk ?ks ; kr vkyh- rl p miyC/k dkxni = rikl . ; kr vkyh- vihykFkhz ; kps fo#/n vl yS; k nks'kkjksi kckcr i wkr-% pkd' kh d#u vihykFkhz ; kauk R; kps Eg.k.ks ekM. ; kl kBh oktoh l akh ns ; kr vkY; kps fnl u ; srs vihykFkhz ; kP; k

fo#/n nks'kkjksi xalkhj vl u l nj nks'kkjksi foHkkxh;
 pk&d'khr fl /n >kysys vkgsr- mijkDr ckchpk fopkj djrk
 f'kLrHkæ i kf/kdkjh ; kauh vihykFkhZ ; kauk vkns'kkUo; s
 ^l sruu cMrQZ^ gh f'k{kk dl ij hP; k ekukus ; kx; vl u
 l nj f'k{kæ/; s cny dj.ks mfpr gks'kkj ukgh] vl k
 fu'd'kz jkT; ea=h x'g ¼ kgj ½ ; kauh dk<ysyk vkgs

vihykFkhZ Jh-rqkkj nksyrjko iqt'iyokj] ekth iksyhl
 f'ki kbz@285 jkT; jk[kho iksyhl cy] xV dæad&4]
 ukxiij ; kapk iufolyksdu vtZ Qs/kG.; kr ; r vl u
 f'kLrHkæ i kf/kdkjh ; kauk fnys'; k vkns'kkUo; s ^l sruu
 cMrQZ^ gh f'k{kk dk; e dj.; kr ; r vkgs

egkj k"V^a jkT; i ky ; kP; k vkns'kkUo; kj o ukokus

5. With pursis at page 120 the applicant has placed on record statements of witnesses recorded during the enquiry, and the bond said to have been executed by the applicant undertaking to refund the amount. We have perused this material.

It was argued by learned counsel for the applicant that the original bond was not produced before the enquiry officer and unless permission was granted for leading secondary evidence, copy of the bond could not have been considered at all. In support of this submission reliance is placed on the following rulings.

1. U.Sree v/s U.Srinivas- 2013 (1) ALL M.R.409
2. The Cotton Corporation of India Ltd. v/s Chakolas Spinning and Wearing Mills Ltd.2009 (2) ALL M.R.117
3. Ganpat Pandurang Ghongade (through LRs) v/s Nivrutti Pandurang Ghongade 2008 (3) ALL M.R.629

These rulings arise out of Criminal/Civil proceedings to which the Rules of Evidence strictly apply. Instant application arises out of departmental proceedings to which these Rules do not strictly apply. Hence, aforesaid rulings will not help the applicant. This Tribunal, in the instant application, is exercising powers of judicial review. Four corners within which such powers can be exercised are well defined. Re-appreciation of evidence which belongs to the realm of appeal is not permissible under judicial review. In “B.C.Chaturvedi Versus Union of India and others AIR 1996 484 it is held-

The disciplinary authority is the sole judge of facts. Where appeal is presented. The appellate authority has co-extensive power to re-appreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H.C.Goel { (1964) 4 SCR 781}, this Court held at page 728 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.

In Union of India & Ors. V. S.I.Abbas {(1993) 4 SCC 357}, when the order of transfer was interfered by the Tribunal, this Court held that the Tribunal was not an appellate authority which could substitute its own judgment to that bona fide order

of transfer. The Tribunal could not, in such circumstances, interfere with orders of transfer of a Government servant. In Administrator of Dadra & Nagar Haveli v. H.P.Vora {(1993) Supp. 1 SCC 551}, it was held that the Administrative Tribunal was not an appellate authority and it could not substitute the role of authorities to clear the efficiency bar of a public servant. Recently, in State Bank of India & Ors. V. Samarendra Kishore Endow & Anr. {J} (1994) 1 SC 217}, a Bench of this Court to which two of us (B.P. Jeevan Reddy & B.I. Hansaria, JJ.) were members, considered the order of the Tribunal, which quashed the charges as based on no evidence, went in detail into the question as to whether the Tribunal had power to appreciate the evidence while exercising power of judicial review and held that a Tribunal could not appreciate the evidence and substitute its own conclusion to that of the disciplinary authority. It would, therefore, be clear that the Tribunal cannot embark upon appreciation of evidence to substitute its own findings of fact to that of a disciplinary/appellate authority.

Scrutiny of material on record by adhering to well defined contours of powers of judicial review leads us to conclude that the findings recorded against the applicant are based on evidence on record. The record establishes that principles of natural justice were followed. The record further establishes that there was no breach of any of procedural safeguards while conducting the enquiry. For all these reasons the applicant will not be entitled to any relief. Hence, the Order.

ORDER

- (i) Application is dismissed.
- (ii) No order as to costs.

(M.A.Lovekar)
Member (J)

(Shree Bhagwan)
Vice Chairman

Dated – 05/04/2022.

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 : 05/04/2022.
and pronounced on
Uploaded on : 05/04/2022.*