

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 194 of 2016 (D.B.)

Suresh Ghanshyam Dongare,
Aged about 50 years,
Junior Accountant, O/o Treasury Officer,
Gondia Tahsil and district Gondia,
Permanent Address – At Shendari Post Palora,
Tahsil Paoni, District Bhandara.

Applicant.

Versus

- 1) State of Maharashtra,
Finance Department, Mantralaya, Mumbai-32.
through its Secretary to Government.
- 2) The Director of Accounts and Treasuries, Mumbai.
- 3) The Joint Director, Accounts and Treasuries at Nagpur.
- 4) The Treasury Officer, Gondia.

Respondents.

Shri D.T. Shinde, Advocate for the applicant.
Shri H.K. Pande, learned P.O. for respondents.

WITH

ORIGINAL APPLICATION No. 195 of 2016 (D.B.)

Ganesh Tukaram Waghaye,
Aged about 35 years, Peon,
O/o Resident of Borgaon Bazar, Post Futana,
Tahsil Devari, District Gondia.

Applicant.

Versus

- 1) State of Maharashtra,
Finance Department, Mantralaya, Mumbai-32.
through its Secretary to Government.
- 2) The Director of Accounts and Treasuries, Mumbai.
- 3) The Joint Director, Accounts and Treasuries at Nagpur.

4) The Treasury Officer, Gondia.

Respondents.

Shri D.T. Shinde, Advocate for the applicant.

Shri H.K. Pande, learned P.O. for respondents.

**Coram :- Hon'ble Shri Shree Bhagwan,
Vice-Chairman and
Hon'ble Shri Justice M.G. Giratkar,
Vice-Chairman.**

Date of Reserving for Judgment : 27th June,2022.

Date of Pronouncement of Judgment : 14th July, 2022.

COMMON JUDGMENT

(Delivered on this 14th day of July, 2022)

Per : Shri Justice M.G. Giratkar, Vice-Chairman.

Heard Shri D.T. Shinde, learned counsel for the applicants and Shri H.K. Pande, learned P.O. for the respondents.

2. The applicant Suresh Ghanshyam Dongare in O.A. No. 194/2016 was appointed as a Senior Clerk (Accounts) at Treasury Office, Gondia on 24/9/2003. He was promoted as a Sub Treasury Officer on 31/7/2013. He was posted at Deori, District Gondia.

3. The applicant Ganesh Tukaram Waghaye in O.A. 195/2016 was appointed as Accountant /Clerk on 1/1/2014. He was working at Treasury Office, Deori.

4. Some bills were presented by Tahsildar, Deori from January to March, 2014. The bills were found proper, therefore, those bills were sanctioned by the Sub Treasury Officer, i.e., the applicant Suresh Dongre (in O.A.194/2016). Thereafter, it was noticed by the Government / Superior Officer of Tahsildar, Deori that Tahsildar, Deori has over drawn the amount by withdrawing the government money from Sub Treasury Office, Gondia and misappropriated the same. Therefore, report was lodged against the Tahsildar, Deori. During the investigation, the amount was recovered from Tahsildar.

5. Both the applicants were chargesheeted for passing bills wrongly. Both the applicants were suspended. Both applicants replied the Show Cause. They have stated that the bills were legal and proper in all respects, because required documents were attached to the bills. The bills having signature of Tahsildar, Deori and therefore those bills were sanctioned. The inquiry was started and it was fixed on 19/9/2014 by the Inquiry Officer. Presenting Officer issued notice to the applicants on 17/9/2014 and directed them to remain present on 18/9/2014.

6. It is submitted that the applicants have not misappropriated any amount. On 18/9/2014, one printed form was given to the applicants. They have stated that charges levelled against them are not disputed. On the basis of the answers were given in the

printed form, the Inquiry Officer concluded the inquiry and submitted his report stating that the charges are proved against the applicants. Both the applicants were demoted to the lower post permanently. Hence, these O.As. before this Tribunal.

7. The respondents have filed their affidavits-in-reply in both the O.As. It is contended that the applicants have admitted their guilt, therefore, there was no necessity to proceed further. The Inquiry Officer concluded the inquiry and submitted its report. There was no any illegality on the part of Inquiry Officer while conducting the departmental inquiry. At last submitted that the O.As. are devoid of merit and liable to be dismissed.

8. Heard learned counsel for the applicants Shri D.T. Shinde. He has pointed out material documents filed on record. The applicants were working as a Sub Treasury Officer and Account Clerk in the Sub Treasury Office, Deori. The learned counsel has pointed out the notice issued by the Presenting Officer, it is dated 17/9/2014. This notice / information show that Presenting Officer issued this letter to the applicant directing him instead of 19/9/2014, he shall remain present on 18/9/2014. The learned counsel has submitted that it was not the authority to Presenting Officer to issue such letter / information.

9. The learned counsel has pointed out the admission given by the applicants. He has submitted that it was a printed form and in the printed form the answers are written as "Yes or No". The learned counsel has pointed out the detailed reply given by the applicants. They have stated in their reply that those bills were presented from Tahsil Office, Deori. As per the letter dated 23/6/2014 at Annex-A-8 written by the applicant Shri Dongre, it appears that Tahsildar, Deori presented the bills. Those bills were having BDS and proper signature of Tahsildar etc. Those signatures were found correct. Therefore, there was no any irregularity on the part of the applicants.

10. Heard learned P.O. Shri H.K. Pande. He has supported the action on the part of the respondents.

11. It appears that the representations / reply of applicants are not taken into consideration by the Inquiry Officer / Appointing Authority. It is pertinent to note that the rules of conducting departmental inquiry are not followed. Both the applicants are separately chargesheeted.

12. The learned counsel has pointed out Rule 12 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. As per the Rule12 "*Where two or more Government servants are concerned in any case, the Governor or any other authority competent to impose*

the penalty of dismissal from service on all such Government servants may make an order directing that disciplinary action against all of them may be taken in a common proceedings.”. It is pertinent to note that common proceedings were not taken as per the rule 12 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979.

13. The learned counsel has submitted that the applicants have replied to the Authority that there was no any malafide intention on their parts. The bills were proper and therefore those bills were passed. Tahsildar, Deori was prosecuted and those amounts were recovered from Tahsildar, Deori. The applicants have not committed any fraud or misappropriation. They have stated in their reply that if they have committed any mistake, they should be pardon. This part of the reply not taken into consideration.

14. In the case of **Inspector Prem Chand Vs. Government of NCT of Delhi & Ors. (2007) 4 SCC,566**, the Hon'ble Supreme Court has held that minor mistakes cannot be said to be misconduct. In the cited Judgment, the Police Inspector was prosecuted because he had not seized the tainted money. It was held that disciplinary authority not recorded any finding of fact that the delinquent Police Inspector was guilty of an unlawful behaviour in relation to discharge of his duty in service. In such circumstances, the Police Inspector could not be said to have committed any misconduct merely because

in the opinion of higher authorities, he ought to have seized the tainted money. In the present O.As., both the applicants were chargesheeted for passing the bills presented by the office of Tahsildar, Deori. It is pertinent to note that both the applicants replied to the Authority that the bills presented by the office of Tahsildar, Deori were correct, there was no irregularity. The BDS were attached to the bills, there were signatures of Tahsildar, Deori and those signatures were compared with the specimen signatures available in the Sub Treasury Office. There was no any malafide intention on their part for passing those bills. Subsequently, Tahsildar, Deori was arrested, misappropriated amount was recovered from Tahsildar, Deori and he is charge sheeted. Therefore applicants should not have been punished by the respondents.

15. The learned counsel has pointed out the Judgment in the case of **Sudhakar Shankar Dahake Vs. Additional Registrar, High Court of Judicature at Bombay, Nagpur Bench, Nagpur.** The Hon'ble Bombay High Court has held as under –

“even though the order of punishment of reduction in rank was warranted, such reduction could not be made to operate permanently. The effect of reduction in rank permanently would be that even though the work and conduct of the petitioner after the date of imposition of the punishment improved and was satisfactory or even excellent he could never be considered for promotion to the higher post thus debarring him promotion permanently. Such a punishment will have disastrous effect or consequence

upon the service career of an employee who normally aspires or looks forward for higher promotion in his service which is an incentive to him for showing more efficiency and improvement in his work. Such permanency in reduction could not have been directed in the absence of any clear notice about bar to the future promotion. Such punishment imposed upon the delinquent employee would be arbitrary and violative of the guarantee under Articles 14 and 16 of the Constitution as the protection guaranteed requires the State to comply with the principles of natural justice before imposing such a ban upon the promotion of an employee which has a disastrous effect or consequence upon his service career . The punishment imposed upon the petitioner permanently reducing him in rank could not thus be sustained and the operative part of the punishment was required to be moved by deleting the word 'permanently' with the result that the petitioner can be considered for future promotion if he is otherwise fit and eligible. AIR 1989 SC 1972. (Operative Order of punishment modified by deleting word "'permanently'")"

16. In the present case, both the applicants were demoted to lower rank permanently. In view of the Judgment of Hon'ble Bombay High Court in the case of **Sudhakar Shankar Dahake** (*cited supra*) such type of punishment cannot be imposed.

17. The learned counsel has submitted that Appellate Authority without recording its reasons mechanically dismissed the appeals. In support of his submission pointed out the decision in the case of **Anil Amrut Atre Vs. District and Sessions Judge, Aurangabad & Ano.,2002 III CLR,341**. From the perusal of the orders of the Appellate Authority, it appears that no opportunity was given to the applicants of being heard. Both orders by the Appellate Authority are not speaking orders. The allegations against the

applicants that they have minutely not scrutinised the bills and therefore the Tahsildar, Deori misappropriated the amount. It is pertinent to note that as per the submission of applicants, the bills were correct in all respects and therefore those bills were sanctioned. Tahsildar, Deori was arrested for misappropriation of Government money. That amount was recovered from him. He is charge sheeted in the Court, therefore, it is clear that there was no any malafide intention on the part of the applicants for passing the said bills. They have stated in their reply that if they have committed any mistake, they should be pardon. It appears that the applicants had no any malafide intention, if there were any mistake on their part, those mistakes are not sufficient to punish them for reduction in the lower rank. Hence, the punishment awarded by the Appointing Authority is liable to be quashed and set aside.

18. In respect of passing appropriate order is the prerogative of the Appointing Authority.

The learned P.O. has pointed out the Judgments in the cases of **B.C. Chaturvedi Vs. Union of India & Ors. (1995) 6 SCC,749** and **Union of India & Ors. Vs. P. Balsubrahmanayam (2021) 5 SCC,662.**

19. In above cited Judgments, the Hon'ble Supreme Court has held that "where findings of disciplinary authority / appellate authority are based on some evidence, Court / Tribunal cannot re-appreciate the evidence and substitute its own findings. It is held in the case of **Union of India & Ors. Vs. P. Balsubrahmanayam** that " *allegations pertaining to receiving of illegal gratification not proved but only procedural lapses in performance of duties proved- imposition of punishment of compulsory retirement- held, was disproportionate and harsh—direction of Tribunal remitting matter to appropriate authority for imposition of minor punishment justified—nature of charges proved against respondent do not justify imposition of major penalty since anyone can make mistake and consequences of mistake should not be unduly harsh.*"

20. In the present matter, both the applicants not committed any misappropriation etc. They have received the bills from Tahsil Office, Deori, the bills were found proper, therefore, those bills were passed. If there is any mistake on the part of applicants about the scrutiny etc., then those cannot be a major ground for punishment awarded by the Appointing Authority. As per the Judgment of Hon'ble Apex Court, this Tribunal cannot impose a minor punishment. Hence, the following order –

ORDER

- (i) Both the O.A.Nos. 194/2016 and 195/2016 are partly allowed.
- (ii) The impugned punishment orders are hereby quashed and set aside. The matters are remanded back to the disciplinary / appointing authority for re-considering the aspects of punishment of both the applicants.
- (iii) No order as to costs.

(Justice M.G. Giratkar)
Vice-Chairman

(Shree Bhagwan)
Vice- Chairman

Dated :- 14/07/2022.

dnk.

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

Name of Steno : D.N. Kadam
Court Name : Court of Hon'ble Vice Chairman.
Judgment signed on : 14/07/2022.
Uploaded on : 15/07/2022.

ok