

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATIONS NO.1064, 1065, 1066 & 1067 OF 2016

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Shri Eknath Jairam Barshinge,)
Age 55 years, Inspector in the office of)
Charity Commissioner, 3, Annie Besant Road,)
Worli, Mumbai, now transferred to the office of)
Public Trust Registration Office, Pimplekha Complex,)
Sakri Road, Dhule,)
R/o 97/55, BDD Chawl, Worli, Mumbai 400018)..Applicants

Versus

1. The Charity Commissioner,)
3, Annie Besant Road, Worli, Mumbai 400018)
2. Smt. N.S. Pawar, Joint Charity Commissioner,)
Kolhapur (Enquiry Officer))..OA.1064/2016
2. Shri R.H. Nathani, Asstt. Charity Commissioner,))
Jalgaon)..OA.1065/2016
2. Shri M.S. Kshirsagar, Jt. Charity Commissioner,)
in the office of Respondent No.1 (Enquiry Officer))..OA.1066/2016
..Respondents

WITH**ORIGINAL APPLICATION NO.1067 OF 2016**

1. Shri Eknath Jairam Barshinge,)
Age 55 years, Inspector in the office of)
Charity Commissioner, 3, Annie Besant Road,)
Worli, Mumbai, now transferred to the office of)
Public Trust Registration Office, Pimplekha)
Complex, Sakri Road, Dhule,)
R/o 97/55, BDD Chawl, Worli, Mumbai 400018)
2. Shri Siddharth Devram Shelar,)
Age 50 years, Senior Clerk in the office of)
Charity Commissioner, 3, Annie Besant Road,)
Worli, Mumbai, now transferred to the office of)
Public Trust Registration Office, Thane)
R/o 3/461, Govt.Colony, Bandra (E), Mumbai 51)
3. Shri Sadanand Vitthal Thakurdesai,)
Age 49 years, Inspector in the office of Res.No.1,)
now transferred as Accountant to the office of)
Public Trust Registration Office, Nashik,)
R/o 403-A, Shiv Park, Anantnagar,)
Badlapur (E), District Thane)
4. Shri Surajpal Hariswarup Parche,)
(Deleted as per order dated 2.3.2017)
5. Shri Peter Savio Pereira,)

Age 38 years, Inspector in the office of Res.No.1,)
now transferred as Accountant to the office of)
Public Trust Registration Office, Raigad,)
R/o C/o. Mr. Shawn Coutinho, B-407, EL Plaza,)
Opp. Citizen Credit Bank, Borivali (W), Mumbai)..Applicants

Versus

1. The Charity Commissioner,)
3, Annie Besant Road, Worli, Mumbai 400018)
2. Shri A.S. Rajandekar, Jt. Charity Commissioner,)
Amravati (Enquiry Officer))..Respondents

Shri B.A. Bandiwadekar – Advocate for the Applicants

Ms. S.P. Manchekar – Chief Presenting Officer for the Respondents

CORAM : Smt. Justice Mridula Bhatkar, Chairperson
Smt. Medha Gadgil, Member (A)
DATE : 14th June, 2023

J U D G M E N T

1. Heard Shri B.A. Bandiwadekar, Ld. Advocate for the Applicants and Ms. S.P. Manchekar, Ld. Chief Presenting Officer for the Respondents.
2. In the above OAs the applicant is challenging the order dated 25.10.2016 passed by respondent no.1 whereby respondent no.1 declined to transfer the pending DE of the applicant with respondent no.2 to the Enquiry Officer on contract basis as per circulars dated 28.10.2009 & 22.10.2013 issued by GAD.

3. Shri B.A. Bandiwadekar, Ld. Advocate submits that GR dated 28.10.2009 gives power to disciplinary authority to transfer enquiry to special enquiry officer. The reason behind issuance of GR is pendency of enquiries for number of years. Ld. Advocate submits that there is implicit object of assurance, transparency and fairness in action. It is a part of principles of natural justice. The Hon'ble Bombay High Court in **State of Maharashtra Vs. Dilip Anant Surve 2005(3) Mh.L.J. 198, decided on 9.3.2005** held that GR is not a product used under Article 309 of the Constitution but it is outcome of Article 162. The DB has ultimately upheld the **judgment and order dated 7.6.2002 passed by the Full Bench of this Tribunal in OAs No.546/2001 & 703/1998 (Rajendra K. Mokashi Vs. The State of Maharashtra & Ors. and Rajaram Popatrao Shisode Vs. The State of Maharashtra & Ors. respectively)**. This GR is not made applicable to the police department. He submits that there is provision for appointment of enquiry officer and no specific provision for transfer of enquiry. The power to transfer is enabling provision and it has no relation in power to appoint under Rule 8(2) of MCS (Discipline & Appeal) Rules, 1979. So GR is to be read and it is in force and therefore disciplinary authority in present case i.e. Charity Commissioner should have appointed a special enquiry officer instead of appointing enquiry officer who had conducted the enquiries.

4. Ld. Advocate submits that he has made representation dated 13.10.2016 to the enquiry officer that four enquiries were going on simultaneously against him at different places in different districts and therefore it was not possible for him to attend the same and he has questioned the fairness of the enquiry officer and all the enquiries on contract basis be kept in Mumbai. All the 4 enquiry officers who were conducting the 4 enquiries were holding the post of Assistant Charity Commissioner and Joint Charity Commissioner. All the officers were on

probation except Enquiry Officer at Jalna. Therefore they are directly under the Commissioner.

5. Ld. Advocate for the applicant pointed out circular dated 26.10.2016 issued by the Charity Commissioner. Ld. Advocate for the applicant submits that many DEs against the employees in Charity Commissioner office are still pending. Ld. Advocate submitted that total 59 enquiries are pending.

6. Ld. Advocate for the applicant submits that there is bias in conducting 4 DEs at the same time against the applicant. The enquiries were kept continuously in different districts. She he has to travel from one place to other. He relies on para 6.21(a) in support of this point.

7. Ld. Advocate for the applicant refers to affidavit of Sakalesh Vasudeorao Pimple, Assistant Charity Commissioner, Mumbai dated 6.12.2016 wherein it is denied that the officers are not in a position to complete the DEs within stipulated period. He also relies on circular dated 26.10.2016 issued by the Charity Commissioner that the DEs are not conducted by following proper procedure within stipulated time. Ld. Advocate for the applicant submits that total 5 enquiries are initiated. Out of 5 one was withdrawn and 4 were pending. The punishment given in 3 enquiries were in the form of removal. The applicant retired on 31.1.2019. In OAs No.1064/2016 & 1065/2016 the punishment of removal was imposed on 20.3.2017. In OA No.1066/2016 the punishment of removal was imposed on 6.3.2017 and in OA No.1067/2017 the punishment of reversion was imposed on 12.5.2017. Ld. Advocate submits that though applicant was given punishment of removal from service on 20.3.2017 he was subsequently given punishment of two months of reversion from the rank. Ld. Advocate for the applicant submits that enquiries were just formality.

8. Ld. Advocate for the applicant submits that GR dated 28.10.2019 was issued for the purpose of entrusting DE to the retired officers on contract basis because of the pendency and accumulation of DE and increasing number of DEs. GR dated 29.12.1988 is the first GR by which new posts were created to complete DEs speedily. This GR was discussed in the Full Bench judgment in *Rajendra K. Mokashi* (supra). By this GR 6 enquiry officers were appointed for the purpose of conducting DEs to bring uniformity. The observations made in the impugned order dated 25.10.2016 is illegal. It is observed that Charity Commissioner being quasi judicial authority the officers were appointed as enquiry officer. The officers appointed in the office of Charity Commissioner are all experienced officers having knowledge and experience. The circular dated 26.10.2016 should not have been issued. Ld. Advocate for the applicant refers to letter dated 20.10.2016 in the affidavit in reply dated 6.12.2016. Fairness in action was not there. It was expected from the Charity Commissioner to transfer the enquiry to outside independent enquiry officer.

9. Ld. Advocate for the applicant relied on GR dated 15.2.2016 by which list of 6 government officers is prepared.

10. There is reasonable likelihood of bias. Ld. Advocate for the applicant relied on the judgment and order of the Hon'ble Supreme Court in **(2011) 8 SCC 380, P.D. Dinakaran (1) Vs. Judges Inquiry Committee & Ors.** He refers to para 71 of the judgment. Whether respondents passed through the test of real likelihood of bias.

11. Ld. CPO submits that all the enquiries were completed and appeals were preferred and conclusion of disciplinary authority in all these four

enquiries are challenged in the OAs filed in 2019. The corresponding OAs are:

OA No.1064/2016	OA No.1127/2019
OA No.1065/2016	OA No.1124/2019
OA No.1066/2016	OA No.1128/2019
OA No.1067/2016	OA No.1123/2019

12. The orders of disciplinary authority are challenged as appeals were decided in 2017 and 2018. Hence, other 4 OAs were filed in 2019.

13. Ld. CPO submits that main thrust of the submissions of the Ld. Advocate for the applicant is the Full Bench judgment in *Rajendra K. Mokashi* (supra). Ld. CPO relied on the judgment of the Hon'ble High Court in *Dilip Anant Surve* (supra). Ld. CPO submits that charge sheets are issued and the enquiries are initiated in time. She submits that all the enquiry officers are quasi judicial officers and they are not having any bias against the applicant. Ld. CPO relies on the affidavit of Sakalesh Vasudeorao Pimple, Assistant Charity Commissioner, Mumbai dated 6.12.2016 on the point of question raised of fairness of the enquiry officers.

14. Shri Vaibhav K. Jadhav, Deputy Charity Commissioner, Mumbai was present in the Court.

15. We have heard and considered the submissions of both the sides. We rely on Rule 8(2) of the MCS (Discipline & Appeal) Rules, 1979, which reads as under:

“8. *Procedure for imposing major penalties.-*

(2) *Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehavior against a Government servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof.”*

Thus the disciplinary authority is competent to conduct any DE. However, if it is not in a position for the competent authority, then the said rule states about delegation of the power to some other officer. Delegation of power to the subordinate or equal rank officer is a special power to that authority. It all depends on the facts, circumstances of each case so also the availability of competent hand to conduct the enquiry. The DE is not fully judicial process but it is quasi judicial process and therefore the officer from the concerned department is routinely appointed as enquiry officer. The enquiry officer is expected to adhere to the principles of natural justice and general procedure based on a prudent man's understanding. However, the Government of Maharashtra has found number of DEs is increasing way back in 1988 and 2 GRs were issued on 28.10.2009 & 22.10.2013 by GAD by which special 6 posts were created for conducting the DE so that accumulation of long pending cases can be pipelined and disposed of. In 2016 also GR was issued. However, in all these 3 GRs as per the ratio laid down in the case of *Dilip Anant Surve* (supra) the rules made under Article 309 of the Constitution has greater mandate than the executive action of legislation taken under Article 162 of the Constitution. All these 3 GRs cannot stand at higher pedestal to the MCS (Discipline & Appeal) Rules, 1979. Thus the power of conducting DE himself or by appointing other officer as enquiry officer under Rule 8(2) cannot be diluted because of these GRs. Much is argued by Ld. Advocate for the applicants that these GRs further enhance the power of the disciplinary authority to transfer enquiries to specially

appointed retired government officers on contract basis. These GRs are enabling provisions facilitating further delegation to Government officers appointment on contract basis. However, it cannot be read as these GRs prohibits the disciplinary authority to conduct enquiry himself or to appoint another officer under Rule 8(2). The submissions of the Ld. Advocate that on the power of the disciplinary authority that he is precluded from appointing any other government servant under Rule 8(2) are not consistent with the law and hence not accepted.

16. The other leg of argument was advanced by the Ld. Advocate that disciplinary authority has issued order dated 25.10.2016 refusing request of the applicant to transfer the DE to special officer appointed on contract basis is not consistent with the circular issued by him on 26.10.2016. These submissions are also not sustainable as the subject matter of the circular dated 26.10.2016 which was the next day of the day under challenge i.e. 25.10.2016 thereby refusing request of transfer of DE. The disciplinary authority in his order of refusal dated 25.10.2016 is well reasoned and it cannot be faulted with the circular. It is mentioned that the enquiry officer should adhere to the procedure which is laid in MCS while conducting DE. Thus, both the documents have no bearing on each other.

17. The judgment of the Hon'ble Supreme Court in *P.D. Dinakaran* (supra) is about existence of general bias in the mind of enquiry officer. However, the applicant could not bring any specific incident of manifestation of bias in respect of enquiry officer. The fact that enquiry officers were working under the disciplinary authority cannot be the ground available to the delinquent officer as such a provision is made under Rule 8(2). Similarly the enquires were conducted continuously at various places in the district also cannot be a good ground for bias. More over the object of transferring the DEs to the retired officers who are

appointed on contract basis is to speed up enquiries pending before the enquiry officer or disciplinary authority. The chart is produced before us showing initiation of DEs and when the enquiry was over in efflux of time i.e. filing of these 4 OAs. That all the 4 enquiries by respective enquiry officers were concluded within one year time and therefore it cannot be said the enquiries were pending. Therefore the decision of the disciplinary authority not to hire assistance of government officers on contract basis was correct and cannot be said to be illegal.

18. In view of the above discussion, we hold that there is no merit in the above four Original Applications and the same deserves to be dismissed.

19. All the four Original Applications are dismissed. No order as to costs.

Sd/-

(Medha Gadgil)
Member (A)
14.6.2023

Sd/-

(Mridula Bhatkar, J.)
Chairperson
14.6.2023

Dictation taken by: S.G. Jawalkar.