

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI  
ORIGINAL APPLICATION NO.362 OF 2016**

**DISTRICT : SANGLI**

Shri Bhagwan Rangarav Patil, )  
Retired as Talathi on 31.12.2004, )  
Since deceased by his L.Rs., )  
Smt. Suniti Bhagwan Patil, )  
Age 51, Widow, R/o Behind Mahakali Servicing Centre,)  
Jat Taluka Jat, District Sangli )..Applicant

Versus

1. The Collector, Sangli )  
2. The Sub-Divisional Officer, )  
Miraj, Office of Sub Divisional Officer, Miraj )..Respondents

Shri M.B. Kadam – Advocate for the Applicant

Smt. Archana B.K. – Presenting Officer for the Respondents

CORAM : Shri Justice A.H. Joshi, Chairman  
Shri P.N. Dixit, Member (A)  
RESERVED ON : 3<sup>rd</sup> April, 2019  
PRONOUNCED ON : 10<sup>th</sup> April, 2019  
PER : Shri P.N. Dixit, Member (A)

**J U D G M E N T**

1. Heard Shri M.B. Kadam, learned Advocate for the Applicant and Smt. Archana B.K., learned Presenting Officer for the Respondents.

Brief facts of the case:

2. The Applicant was working as Talathi, when a complaint was made against the Applicant for making alteration in Government papers by misusing his powers. Departmental Enquiry was held against him and the penalty of reversion to the post in lower scale of pay was ordered by impugned order dated 30.12.2014 (Exhibit A page 13). The Applicant preferred appeal against the same but the same was rejected by the appellate authority by order dated 16.9.2015 (Exhibit 6 B page 68). The Applicant has, filed present OA for challenging the order passed in appeal. Applicant has made following prayer which reads as under:

*“10(b) This Hon’ble Tribunal further may be pleased to quash and set aside the impugned order dated 16.9.2015 passed by the Appellate Authority as well as the impugned order dated 30.12.2014 passed by the disciplinary authority.”*

(Quoted from page 10 of OA)

3. In support of the same he has furnished in memo of OA following grounds:-

*“7.1 That the Applicant had not been given an opportunity of being heard in the matter of charges leveled against the Applicant.*

*7.4 That the Applicant could not cross-examine any of the witness as no opportunity of cross-examination was given to the Applicant.”*

(Quoted from page 8-9 of OA)

4. The learned Advocate for the Applicant has relied on the following judgments in support of his claim:

(1) Ravindra R. Tondulkar v. Municipal Corporation of Greater decided by Bombay High Court on 28.8.2000, 2001(1) Bom CR 744, 2001 (88) FLR 65.

(2) Anil Amrut Atre v. District & Sessions Judge decided by Bombay High Court on 2.5.2002, 2003(2) Bom CR 246, 2002(3) Mh.L.J.750. The relevant portion of the same reads as under:

“31. In our opinion, however, the point is finally concluded by the Supreme Court in above two decisions, wherein interpreting similar Rules, the Apex Court has held that personal hearing ought to be afforded by the Appellate Authority to the delinquent. We are, therefore, unable to agree with the conclusions in the above cases. Similarly, in Writ Petition No. 3221 of 1996 [Subhash Tatoba Nikam v. The Hon'ble High Court of Judicature of Bombay and Anr.](#) decided on December 3, 1998, it was held that when the Appellate Authority affirms the original order, no reasons were required to be recorded. With respect, the decision is not in conformity with the decisions of the Supreme Court R. P. Bhatt and Ram Chander, and cannot be said to have laid down correct law on the point, [State Bank of Patiala v. Mahendra Kumar Singhal](#), 1994 Supp.(2) SCC 463 is not relevant to the point. It was held by the Apex Court therein that affording of personal hearing by the Appellate Authority is not necessary in absence of such a rule. In the instant case, the Appellate Authority is required to consider as to whether the procedure laid down in the Rules has been followed, and, according to the Supreme Court, the expression ('consider') will include within its sweep application of mind, personal hearing and recording of reasons. It was, therefore, obligatory on the Appellate Authority to apply its mind and to pass an appropriate speaking order after affording personal hearing to the delinquent.”

5. The Respondents no.1 and 2 have filed their reply in the form of affidavit. The relevant paras read as under:

“10. With reference to para no.6.4 I say and submit  
 .....

*All the relevant papers were supplied to the Applicant during the proceeding of departmental inquiry. The charge sheet was served on the Applicant in time. A copy with acknowledgement is annexed herewith as **Exhibit R-1**. Applicant submitted adjournment application before Enquiry Officer on 25/11/2014. In that application, Applicant specifically stated and admitted that all relevant documents were received by him. Copy of the application is annexed herewith as **Exhibit R-2**. The Applicant has requested for inspection of all the relevant documents under R.T.I. Act from the department. The department informed the Applicant that within office hours he can visit to office at any time and inspect the documents. But the Applicant not came to office. The contents of this para are therefore false and after thought and not correct and denied by Respondents in toto.*

11. *With reference to para no.6.5 I say and submit that all the contents of this para are false and after thought hence denied in toto. The Applicant has filed his statement on record, opportunity of cross examination was given to him, and Applicant repeatedly filed adjournment application but has not cross examined the witnesses. The enquiry officer gave full opportunity to defend the Applicant. Total 16 dates are fixed, out of that 9 times Applicant seek adjournment. Copies of adjournment applications are submitted herewith and marked as **Exhibit R-3 to R-10 colly**. The enquiry officer ultimately gave last chance to submit his written statement. After completing inquiry, the Enquiry Officer submitted his report to the Authority.*

12. *With reference to para no.6.6 I say and submit that the opportunity of hearing was given to the Applicant by Respondent no. 1 and 2, there is no violation of principle of natural justice in case of present Applicant. On every stage of inquiry, the opportunity was given to the present Applicant and accordingly the Applicant submitted his statement, and also submitted written argument / submission to each charge. In fact from the record it is observed that, the Applicant*

*deliberately filed adjournment applications and not ready to conduct the matter.*

14. *With reference to para no.6.8 I say and submit that it is not correct that, the statement of witnesses has been pre-typed and their statement were not recorded as an evidence during the proceeding. In fact the witnesses was present during departmental inquiry proceeding and their statement was recorded in presence of the present Applicant. Even though opportunity was given to the Applicant, he has not cross examined the witnesses. There is no violation of any basic rule. It is not correct that, the Respondent had pre-intentionally conducted the proceeding and punished to the Applicant. It is clear from the documentary evidence on record that, there is substantial material against the Applicant in the nature of proof and on the basis of such evidence the Applicant was held guilty and punished accordingly.*
15. *With reference to para no.6.9 I say and submit that in case of the present Applicant documentary evidence is sufficient to hold him guilty. Copies of relevant documents which are re-corrected by Applicant are annexed and Exhibited as **Exhibit R-11 to R-19**. After giving opportunity of hearing to the Applicant and finally relying on documentary and as well as oral evidence on record the Applicant was held guilty and punished. Therefore, all the contents of this para are false, after thought and hereby denied.*
16. *With reference to para no.6.9 I say and submit that a report was submitted after inspection of document of the period 7/6/2009 to 17/3/2012, at that time the Applicant is serving as Talathi at Umrani. Relying on the said report, departmental inquiry was initiated and it was proved during the proceeding that there is re-correction of entries and other serious charges. Therefore, the Applicant was held guilty and punished. All the contents of this para are false and after thought and hereby denied. It was verified during the inquiry that, the re-correction of entries were made in the period of present Applicant. The re-corrected entries have no reason or the documentary proof, therefore, department inquiry was initiated against the Applicant. Charges no. 1, 2, 22 were not proved during enquiry, but charge no. 26 was proved as illegal entry was made by the Applicant. All other charges were proved legally against the Applicant.*

17. *With reference to para no.6.10 I say and submit that in one breath Applicant is asking for re-trial on the ground that opportunity was not given to him, and in second breath the Applicant stated that, ' the Applicant has gave detailed explanation about all the charges leveled against him. From the conduct of the Applicant, it is clear that, full opportunity was given to him to satisfy the enquiry officer / disciplinary authority, but he was not successful and hence punished accordingly. The disciplinary authority considered all the relevant points, documentary and oral evidence in case of the present Applicant and decided the matter finally. As the opportunity was given to the Applicant at every stage during the proceeding, there is no question of remand of the matter. The Respondent had not committed error, miscarriage of justice to the Applicant.*
18. *With reference to para no.7.1, I say and submit that it is not correct that, the Applicant had not given an opportunity of hearing in the matter. In fact on 11/11/2013 , 18/7/2014, 21/8/2014, 10/9/2014, 10/11/2014, 13/11/2014, 18/11/2014, 24/11/2014 & 1/12/2014 the matter was adjourned for hearing as the Applicant seek time by filing adjournment application. Written Statement was submitted by the Applicant before the disciplinary authority. The Applicant has not cross examined the witnesses even though opportunity was given to him. Finally the Applicant submitted written synopsis / arguments before Respondents.*
20. *With reference to para no.7.3 I say and submit that the examination in chief of the witnesses was recorded in front of the present Applicant and it was not pre-typed.*
21. *With reference to para no.7.4, I say and submit that it is not correct that, the Applicant could not cross examined any of the witnesses as no opportunity of cross examination was given to the Applicant. In fact, opportunity was given to the Applicant but he has not cross examined the witnesses.*
26. *Furthermore, I say that the Applicant has challenged the order of reversion dated 30/12/2014 , which was confirmed in appeal on 16/09/20152. Applicant has made an appeal against the same and it has been decided against him. The Hon`ble Apex Court held in Principal Secretary Govt. of Andhra Pradesh and Anr. Vs. M. Adinarayan, (2004) 12SCC 579, the Administrative Tribunal cannot sit as a Court of appeal over a decision based on the finding of*

*disciplinary proceedings. Where there is some relevant materials, which the Disciplinary Authority has accepted, it is not the function of the Administrative Tribunal to review the same and reach the conclusion. The Administrative Tribunal cannot ignore the findings of the Disciplinary Authority, the truth or otherwise, the charge is a matter for Disciplinary Authority to go into. Judicial review cannot extend to examination of the correctness of the charges, as it is not an appeal but only a review of the manner in which decision was made. In another case, Sayyed Rahamuddin Vs. Director General CSIR and others, (2001) 9 SCC 575, the Apex Court has held that it is well settled that the conclusion or the finding of the fact arise at in a disciplinary enquiry can be interfered with by the Court only when there are no material for the said conclusion or the conclusion cannot be that of a reasonable man. In case of Damopanha Sagar Rural Regional Bank and Anr. Vs. Munna Lal Jain, 2005 AIR SCW 95, the Hon`ble Supreme Court held that scope of judicial review limited, the court should not interfere with administrative decision unless it was illogical or was shocking to conscious of the Court.*

*26.1 In the case of Kailashnath Gupta Vs. Enquiry Officer, Allahabad Bank and Ors. 2003 (9) SCC 480 the Hon`ble Apex Court has held that the power of interference with the quantum of punishment is extremely limited. In case of Chairman and Managing Director, United Commercial Bank & Ors. Vs. P.C.Kakkar 2003 (4) SCC 364 held that the Court should not interfere with the Administrator's decision unless it was illogical or suffers from procedural impropriety and was shocking to the conscious of the court. In the sense that it was in defiance of logic or moral standards. As per Wednesbury case 1948 KB 223, the Court would not go into the correctness of the choice made by the administrator and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited. In case of B.C. Chaturvedi Vs. Union of India and Ors. (1995) 6 SCC 749 held that in a case of departmental enquiry the scope of judicial review limited, Court / Tribunal cannot interfere with findings of facts based on evidence and substitute its own independent findings.”*

*(Quoted from page 108-116)*

6. The Respondents have, therefore, prayed that there is no substance in the OA and the same deserves to be dismissed.

7. Issues for consideration are:

- (i) *Whether the disciplinary authority as well as the appellate authority have violated the principles of natural justice by denying opportunity for cross-examination to the Applicant?*
- (ii) *Whether the impugned orders issued by the disciplinary authority and appellate authority are illegal?*

Discussion and findings:

8. Thrust of the arguments furnished by the Applicant revolves around denial of opportunity to cross-examine and personal hearing and hence the principles of natural justice have been violated.

9. Respondents have affirmed that an opportunity was provided to the Applicant for cross-examination and statements of witnesses were recorded in his presence. The Applicant on his own for unexplained reasons has preferred not to cross-examine the witnesses. The disciplinary authority as well as appellate authority provided him due and adequate opportunity in the process of enquiry and appeal, however, applicant did not avail of these opportunities. Record annexed to the affidavit in reply filed by the State reveals that the applicant submitted written statement before the disciplinary authority rather than personal hearing.

10. The impugned orders issued by the disciplinary authority and appellate authority indicate that these authorities have offered opportunity of hearing and observed principles of natural justice, including providing an opportunity for cross-examination and personal



hearing. The citations furnished by the Ld. Advocate for the Applicant are, therefore, not applicable on facts of present case.

11. We, therefore, do not find any substance in the contentions raised by the Applicant in the OA.

12. Original Application is, therefore, dismissed for the above reasons with no order as to costs.

Sd/-

**(P.N. Dixit)**  
**Member (A)**  
**10.4.2019**

Sd/-

**(A.H. Joshi, J.)**  
**Chairman**  
**10.4.2019**

Dictation taken by: S.G. Jawalkar.