

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.444 OF 2019

DISTRICT : KOLHAPUR

1. Shri Avinash Raosahheb Lembhe,)
Age 45 years. Occ. Additional Sub Auditor,)
R/o At & Post Venna Nagar,)
Tal. & District Satara- 415022)

2. Sou. Kojeshri Hemant Kharade,)
Occ. Second Additional Auditor,)
R/o Jijai Niwas, At & Post Vadduj,)
Taluka Khhatav, District Satara 415506)..Applicants

Versus

1. The State of Maharashtra,)
Through the Secretary,)
Cooperation Department, Mantralaya,)
Mumbai 400032)

2. Divisional Joint Registrar of Cooperative Society)
(Audit), Kolhapur Division, Kolhapur)
Plot No.M-4, Behind Shri Shahu Market Yard)
Post Office, Kolhapur 416005)

3. The Commissioner for Cooperation and the)
Registrar of Cooperative Society, MS, Pune-9)

4. The Enquiry Officer,)
 Shri Sham Bhimrao Pakhare,)
 Divisional Jt. Registrar of Cooperative Societies)
 (Audit), Kolhapur Division, Kolhapur)..Respondents

Shri R.M. Kolge – Advocate for the Applicant

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

CORAM : Shri P.N. Dixit, Vice-Chairman (A)
 Shri A.D. Karanjkar, Member (J)
 RESERVED ON : 19th June, 2019
 PRONOUNCED ON : 21st June, 2019
 PER : Shri P.N. Dixit, Vice-Chairman (A)

J U D G M E N T

1. Heard Shri R.M. Kolge, 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 Second Additional Auditor, Grade II in Class III post. The Applicant was expected to audit loan approval but allegedly did false inspection. Hence, Respondent no.2 appointed Enquiry Officer. On 27.2.2019 Applicant sought permission for appointment of legal practitioner as friend officer in the Departmental Enquiry (DE) against the Applicant. The Respondent no.2 issued impugned order on 28.2.2019. The relevant portion of the same reads as under:

“विषय : विभागीय चौकशी बचाव सहाय्यक म्हणून विधी व्यवसायी यांना परवानगी मिळणेबाबत.

२. आपलेकडील दिनांक २७.०२.२०१९ रोजीच्या पत्रान्वये आपणाविरुद्ध आदेशित विभागीय चौकशी प्रकरणी बचाव सहाय्यक म्हणून विधी व्यवसायी अॅड.अजित कदम, कोल्हापूर यांना कामकाज पहाणेस परवानगी मिळावी अशी विनंती या कार्यालयास केलेली आहे.

आपलेवर ठेवणेत आलेल्या दोषारोपासंबंधी आदेशित विभागीय चौकशी प्रकरणी सादरकर्ता अधिकारी म्हणून या कार्यालयाकडील दि.११.०२.२०१९ रोजीच्या आदेशान्वये श्री.ए.सी. आढारी, सादरकर्ता अधिकारी तथा विशेष लेखापरीक्षक वर्ग-२, सहकारी संस्था, (पणन) सातारा यांची नियुक्ती केलेली आहे. सदर सादरकर्ता अधिकारी हे विधी व्यवसायिक (वकील) नसलेने, महाराष्ट्र नागरी सेवा (शिस्त व अपिल) नियम १९७९ मधील भाग ४ नियम ८ (८) व विभागीय चौकशी नियमपुस्तिका १९९१ प्रकरण ३ मधील नियम ३.१८ अन्वये सदरची आपली मागणी अमान्य करणेत येत आहे. तसेच आपला संदर्भ क्रमांक २ अन्वये या कार्यालयास सादर केलेला विनंती अर्ज दप्तरी दाखल करणेत येत आहे.”

(Quoted from page 44 of OA)

3. On 8.3.1999 the Applicant represented to the higher appellate authority. The same was however, rejected on 15.4.2019 (Exhibit L page 110 of OA).

4. The Applicant has prayed to quash and set aside the impugned orders dated 28.2.2019 & 15.4.2019 and permit appointment of legal practitioner as friend officer in the DE (para 9(a) page 10 of OA).

5. Ld. Advocate for the Applicant has relied on following judgments to support his prayer.

(1) Anil Bapu Ingawale Vs. The State of Maharashtra & Ors., (2012) 6 Mh.L.J. 126. Relevant portion of the same reads as under:

“10. The charges in the present matter against the petitioner, from his perspective, are quite serious. No-one else can decide and/or compel him to proceed, if he is expressing inability to continue with the departmental enquiry in person and, therefore, if

an Application is filed with request and if, according to him, the requirement of legal mind is necessary to defend the case, the rejection of this Application, in such fashion, in my view, will affect his right to defend the matter. The consequences of improper defence would be quite serious so far as the petitioner is concerned. It will cause great injustice and hardship, apart from this is nothing but to denial of principle of natural justice apart from legal rights so referred above.”

(2) C.L. Subramaniam Vs. The Collector of Customs, Cochin, (1972) 3 SCC 542. The relevant portion of the same reads as under:

“22. It is needless to say that rule 15 is a mandatory rule. That rule regulates the guarantee given to Government servants under Art. 311. Government servants by and large have no legal training. At any rate, it is nobody’s case that the appellant had legal training. Moreover when a man is charged with the breach of a rule entailing serious consequences, he is not likely to be in a position to present his case as best as it should be. The accusation against the appellant threatened his very livelihood. Any adverse verdict against him was bound to be disastrous to him, as it has proved to be. In such a situation he cannot be expected to act calmly and with deliberation. That is why rule 15(5) has provided for representation of a Government servant charged with dereliction of duty or with contravention of the rule by another government servant or in appropriate, cases by a legal practitioner.

23. For the reasons mentioned above, we think that there had been a contravention of rule 15(5). We are also of the opinion 496 that the ’appellant had not been afforded a reasonable opportunity to defend himself. Hence the impugned order is liable to be struck down and it is hereby struck down.”

6. The Respondent no.2 has filed his affidavit in reply and resisted the contentions raised by the Applicant. According to the Respondents the Applicant is indulging in delaying tactics possibly as the Applicant has no case on merit to face the charge sheet. The contents in the charges do not involve any legal matter and there is no any mix of facts and law. The case laws cited by the Applicant are not applicable in the present case. The Applicant has been given every opportunity as per the principles of natural justice. The allegations made by the Applicant that if the charges against the Applicant are established, the Applicant would be dismissed and hence permission to appoint legal practitioner is necessary.

7. The Respondents have therefore submitted that the OA is without foundation and devoid of any merits.

Discussion and findings:

8. The impugned order has merely mentioned that the Presenting Officer in the said case is not a person from legal profession and therefore the prayer made to engage a person with legal background is rejected. The disciplinary authority should have explained that when the DE has been proposed under Section 8 it presupposes that the charges leveled are such that if proved they would result in major punishment including removal from service. In such circumstances as mentioned by the Hon'ble Supreme Court the charges against the Applicant from his perspective are quite serious. As stated by the Hon'ble Supreme Court, "the consequences of improper defence would be quite serious so far as Applicant is concerned".

9. In view of the above, it would be just to provide him every reasonable opportunity including engaging of a legal practitioner to defend

his case. The disciplinary authority is at liberty to have best legal brain as enquiry officer and Presenting Officer.

10. In view of the foregoing, Original Application is allowed in terms of prayer clause 9(a) and the impugned order is quashed and set aside. No order as costs.

Sd/-

(A.D. Karanjkar)
Member (J)
21.6.2019

Sd/-

(P.N. Dixit)
Vice-Chairman (A)
21.6.2019

Dictation taken by: S.G. Jawalkar.