IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.542 OF 2015

DISTRICT : PUNE

Shri Rajkumar Hanmantrao Jadhav)
M-2/247, Laxminagar, Parvati, Pune 411009)..Applicant

Versus

1. The State of Maharashtra,)
Through Chief Secretary, Mantralaya,)
Mumbai 400032)

2. The Principal Secretary,)
Cooperation Department, Mantralaya, Mumbai)

3. The Commissioner for Cooperation and)
Registrar C.S., Central Building, Pune-1)

4. The Divisional Joint Registrar,)
Cooperative Societies, Sakhar Sankul,)
Shivajinagar, Pune 411005)..Respondents

Smt. Punam Mahajan – Advocate for the Applicant
Smt. K.S. Gaikwad – Presenting Officer for the Respondents

CORAM : Smt. Justice Mridula Bhatkar, Chairperson
Smt. Medha Gadgil, Member (A)
RESERVED ON : 15th February, 2023
PRONOUNCED ON: 5th April, 2023
PER : Smt. Medha Gadgil, Member (A)

J U D G M E N T

1. Heard Smt. Punam Mahajan, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

2. Ld. Advocate for the applicant submits that applicant challenges order dated 29.2.2016 passed by the Enquiry Officer wherein the Departmental Enquiry (DE) was disposed off with punishment of deduction of Rs.100/- per month from the pension and also the period of suspension from 2.1.1995 to 9.4.2001 was treated as period spent on duty. Ld. Advocate for the applicant submits that appeal of the applicant was dismissed by order dated 20.10.2016 by a non-speaking order.

3. The applicant who was working as Cooperative Officer in the office of Deputy Registrar, Cooperative Societies, Pune City was appointed as an Administrator on the Shantirakshak Cooperative Housing Society, Pune from 10.4.1991 to 27.4.1992. This was additional duty on the applicant. Meanwhile another Senior Administrator was also appointed by the Government. The Audit of the society was done by the Government Auditor Shri C.Y. Pingale, who submitted his report in October, 1993. The audit report reveals that during the tenure of the applicant as the Administrator in the said society, financial misappropriation had taken place. Auditor C.Y. Pingale also lodged a police complaint on 24.11.1994 against some Executive Director, one contractor and the applicant.

4. Respondent no.4 initiated a DE against the applicant and by order dated 15.2.1995 and the applicant was suspended w.e.f. 2.1.1995 as per Rule 4(2) of MCS (Discipline & Appeal) Rules, 1979. Respondent no.2 reinstated the applicant by order dated 20.3.2001. Thus, the applicant was under suspension from 2.1.1995 to 31.3.2001.

5. In the meanwhile the applicant retired on 28.2.2002. The criminal case against the applicant was decided after 13 years on 12.12.2007 and all accused including applicant were acquitted. Ld. Advocate for the applicant challenges the punishment order dated 29.2.2016 pursuant to DE held against the applicant as being totally illegal and bad in law as after the retirement of the applicant as respondent no.4 do not have any power to issue punishment.

6. Hon'ble Minister, Cooperation by his order dated 10.7.2015 has rejected the audit report on the ground that it is erroneous, illegal, not relied, inconsistent with law.

7. Ld. Advocate for the applicant argued that the basis of the said DE was the Audit report which was later held not to be valid. There is no evidence to prove the charges against the applicant. She further submitted that criminal case was decided on 12.12.2007 and all accused including applicant were acquitted. She further stated that the State preferred appeal before the District and Sessions Court, Pune which was also dismissed on 1.9.2012. The appellate Court held that, "The Audit work and report is doubtful and not believable. So I cannot place reliance on it." She moreover, pointed out that applicant was not the sole Administrator in the said society and another person Shri I.R. Sutar, was the Senior Administrator, a fact which has been ignored by the respondents.

8. Ld. Advocate for the applicant pointed out that the DE was hastily completed within one month without holding proper enquiry and without giving proper opportunity to the applicant. The documents not proved are inadmissible as evidence. She further pointed out that there was an inordinate delay in concluding DE which has led to severe mental agony.

The appeal was dismissed by nonspeaking order which shows non application of kind. She further pointed out that in this case the enquiry under Section 88 of the Maharashtra Cooperative Societies Act, 1960 was cancelled.

9. Ld. Advocate for the applicant relied on the following judgments:

(i) Prem Nath Bali Vs. Registrar, High Court of Delhi & Anr. (2015) 16 SCC 415. (Para 28)

(ii) Vijay Singh Vs. State of Uttar Pradesh & Ors. (2012) 5 SCC 242. (Paras 14,17 and 19)

(iii) Life Insurance Corporation of India & Anr. Vs. Ram Pal Singh Bisen (2010) 4 SCC 491. (Paras 12, 22 to 27 & 31)

(iv) State of Uttaranchal & Ors. Vs. Kharak Singh (2008) 8 SCC 236. (Paras 15 and 20)

10. Per contra, Ld. PO pointed out that a fair DE was conducted after following due procedure. She pointed out that out of 11 charges, 1 is partly proved, four are proved and six are not proved. Charge no.1 is proved, which pertains to illegal transfer of flat and further grant of illegal membership. Charge no.2 is proved, which relates to not holding General and Special meeting related to allotment of flat as per Rules of Cooperative Societies Act. Charge no.3 is proved which relates to payment made to M/s. Shirke without properly checking the record. Charge no.4 is also proved which relates to the tender procedure not being followed while dealing with M/s. Saigiri Constructions. Charge No.11 is partly proved which relates to dereliction of duty, as he failed to inform his superior

about the irregularities committed by the earlier committee. Ld. PO pointed out that charges 5, 6 & 10 related to Audit report are not proved.

11. Ld. PO admits that there has been inordinate delay on the part of the Government before issuing final punishment order. This has been admitted by both the disciplinary as well as appellate authority. The suspension period of the applicant has been regularized. The appeal filed by the applicant was also dismissed and the order of punishment was confirmed. She further pointed out that the appeal decided by the Hon'ble Minister was under Section 88 of the Maharashtra Cooperative Societies Act and this exoneration is not as per the Maharashtra Civil Services. She further pointed out that there has been no violation of the principles of natural justice as the applicant was given adequate opportunity of being heard.

12. Ld. PO relies on the judgment and order dated 21.9.2021 passed by the Hon'ble Supreme Court in **Civil Appeal No.5848 of 2021 in Union of India & Ors. Vs. Dalbir Singh.** Paras 22, 23 and 26 of the said judgment read as under:

> *"22. This Court in Union of India & Ors. v. P. Gunasekaran had laid down the broad parameters for the exercise of jurisdiction of judicial review. The Court held as under:*
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> *"12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of*

the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

(a) the enquiry is held by a competent authority;

(b) the enquiry is held according to the procedure prescribed in that behalf;

(c) there is violation of the principles of natural justice in conducting the proceedings;

(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

(i) reappreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be; (vii) go into the proportionality of punishment unless it shocks its conscience."

23. In another Judgment reported as B.C Chaturvedi v. Union of India & Ors., it was held that the power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. The Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. The Court is to examine as to whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. This Court held as under:-

> *"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such*

as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H.C. Goel [(1964) 4 SCR 718 : AIR 1964 SC 364 : (1964) 1 LLJ 38] this Court held at p. 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."

26. This Court in Noida Entrepreneurs Association v. NOIDA & Ors. held that the criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public, whereas, the departmental inquiry is to maintain discipline in the service and efficiency of public service. It was held as under:

"11. A bare perusal of the order which has been quoted in its totality goes to show that the same is not based on any rational foundation. The conceptual difference between a departmental inquiry and criminal proceedings has not been kept in view. Even orders passed by the executive have to be tested on the touchstone of reasonableness. [See Tata Cellular v. Union of India [(1994) 6 SCC 651] and Teri Oat Estates (P) Ltd. v. U.T., Chandigarh [(2004) 2 SCC 130] .] The conceptual difference between departmental proceedings and criminal proceedings have been highlighted by this Court in several cases. Reference may be made to Kendriya Vidyalaya

Sangathan v. T. Srinivas [(2004) 7 SCC 442 : 2004 SCC (L&S) 1011] , Hindustan Petroleum Corpn. Ltd. v. Sarvesh Berry [(2005) 10 SCC 471 : 2005 SCC (Cri) 1605] and Uttaranchal RTC v. Mansaram Nainwal [(2006) 6 SCC 366 : 2006 SCC (L&S) 1341] .

> *"8. … The purpose of departmental inquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offense for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental inquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in the criminal cases against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental inquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offense generally implies infringement of public duty, as distinguished from mere private rights punishable under criminal law. When the trial for a criminal offense is conducted it should be in accordance with proof of the offense as per the evidence defined under the provisions of the Indian Evidence Act, 1872 [in short 'the Evidence Act']. The converse is the case of departmental inquiry. The inquiry in a departmental proceeding relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict*

> *standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. … Under these circumstances, what is required to be seen is whether the departmental inquiry would seriously prejudice the delinquent in his defense at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances."*

13. Ld. PO while dealing with the above judgments submitted that in the case of *Vijay Singh* (supra) on the contrary there was proper evidence and the enquiry was conducted in fair and impartial manner. In the case of *LIC of India* (supra), Ld. PO stated that principles of natural justice were followed and the applicant was given opportunity to put forth his case. In the case of *State of Uttaranchal Vs. Kharak Singh* (supra) she stated that the procedure of DE was properly followed.

14. In *Premnath Bali* (supra) the question of inordinate delay has been discussed and it is stated that the Court may interfere where it is proved that the punishment inflicted on the delinquent was wholly unreasonable, arbitrary and disproportionate to the gravity of proved charges. *Vijay Singh* (supra) deals with the issue of not following the procedure prescribed. It deals with the fact that authorities have to strictly adhere to statutory rules while imposing punishment. *LIC of India Vs. Ram Pal Singh Bisen* (supra) deals with the issue of how evidence is to be recorded in DE and it is held that mere fact that documents were exhibited in the civil suit does not mean that their contents stand proved. In *State of Uttaranchal Vs. Kharak Singh* (supra) the respondent was not furnished with the required documents.

15. In this case we have considered the submissions of both the sides. This OA has had long history. We are unable to accept the submissions of

the Ld. Advocate for the applicant that the audit report was doubtful and hence the DE should be quashed. In this DE the audit report was merely part of corroborative evidence and there were other documentary/oral evidence placed on record and taken into account. It is settled position of law that this Tribunal is not empowered to reexamine the evidence in DE, if proper procedure has been followed. However, it is an indisputable fact that there has been an unexplained and inordinate delay in completing the enquiry. The enquiry was first started in 1994. The applicant superannuated on 28.2.2002. In the meanwhile applicant made repeated representations for regularization of his suspension period and fixation of pay and pension. The appeal filed by the applicant was finally dismissed on 29.10.2016. It is seen that not only the enquiry was not completed within time limit but delayed inordinately. In view of this inordinate delay in concluding the DE and in view of the ratio laid down in *Premnath Bali* (supra), we pass the following order.

16. The Original Application is allowed on the ground of long unexplained delay and the impugned order dated 29.10.2016 is quashed and set aside. We direct the respondents to grant consequential benefits. No order as to costs.

Sd/-

(Medha Gadgil)
Member (A)
5.4.2023

Sd/-

(Mridula Bhatkar, J.)
Chairperson
5.4.2023

Dictation taken by: S.G. Jawalkar.

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