IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.67 OF 2018

DISTRICT : MUMBAI

Shri Datta Mahadev Shelke,)
Senior Clerk, Irrigation Project, Construction Division,)
Kuwarbav, Ratnagiri, R/at Room No.6, Building No.8,)
Irrigation Colony, Kuwarbav, Ratnagiri)..Applicant

Versus

1. The State of Maharashtra,)
Through the Chief Engineer,)
Konkan Irrigation Region, Hong Kong Building,)
Hutatma Chowk, Fort, Mumbai)

2. The Superintending Engineer,)
Ratnagiri Irrigation Circle, Kuwarbav, Ratnagiri)

3. The Executive Engineer, Sindhudurg,)
Irrigation Project, Construction Division,)
Charate, Sawantwadi, Sindhudurg)
(formerly known as Tilari, Head Work Division)
No.1, Konalkatta))

4. The Executive Engineer,)
Irrigation Project Construction Division,)
Kuwarbav, Ratnagiri)..Respondents

Shri D.B. Khaire – Advocate for the Applicant
Shri K.B. Bhise – Presenting Officer for the Respondents

CORAM : Shri P.N. Dixit, Member (A)
RESERVED ON : 10th August, 2018
PRONOUNCED ON : 13th August, 2018

J U D G M E N T

1. Heard Shri D.B. Khaire, the learned Advocate for the Applicant and Shri K.B. Bhise, the learned Presenting Officer for the Respondents.

Facts of the case:

2. The Applicant joined as Senior Clerk on 19.4.2010 in the office of Respondent No.3. After joining within few days, he was given charge of the accounts branch. While holding this charge, the revenue amount of Rs.20,23,770/- was retained by him for three years till it was discovered by the department. For this default DE was initiated against the Applicant. The applicant admitted the default and followed the directive to refund the said amount. The disciplinary authority imposed punishment of stoppage of three increments with permanent effect. It further charged him interest on the amount kept by him in his personal capacity for a prolonged period.

3. By the present OA, the Applicant is praying to quash and set aside order dated 30.6.2015 (Exhibit A-3) issued by Respondent No.3 to recover the interest amount from the salary of the Applicant. Regarding stoppage of increments, he proposes to file separate appeal and hence has sought permission not to press for other reliefs.

4. The Executive Engineer has informed the Applicant vide letter dated 30.06.2015, page 21 at paragraph 2 & 3 as under:-

> "२. तथापि या विभागाच्या मे. रोडी डबीर आणि कंपनी यांचेमार्फत झालेल्श्स अंतर्गत लेखापरीक्षा अहवालामध्ये शासकीय रकमेच्या अपहाराबाबत व या अनियमिततेबाबत जबाबदार असलेल्या संबंधितांकडून दंडनीय दाराने व्याजाने जबाबदारी निश्चित करावी व वसुलीबाबत कार्यवाही करावी अशा सूचना दिलेल्या असून महामंडळ कार्यालयाच्या संदर्भिय पत्रान्वये तात्काळ पूर्तता काणेबाबत या विभागास सूचना दिलेल्या आहेत.
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> ३. दि. १५.०९.२०११ ते २८.११.२०१३ या कालावधीमधील रु.२०,२३,७७०/- रकमेवरील १८ टक्के इतक्या दंडनीय दराने रु.४,३२,९२१/- इतकी व्याजाची रक्कम होत असून ती संबंधिताकडून कशाप्रकारे वसुल करावी याबाबत सविस्तर आदेश मिळणेबाबत मंडळ कार्यालयास तसेच महामंडळ कार्यलयास कळविण्यात आलेले होते. तथाति मंडळ कार्यालयाकडूळ अद्याप याबाबत आदेश प्राप्त झाले नसल्याने आपण वरील तिघेजण प्रत्येकी १/३ रक्कम म्हणजे रु.१,४४,३०७/- (प्रत्येकी) व्याजाची रक्कम या कार्यालयात दि.३१.०७.२०१५ पूर्वी भरणा करावी ही विनंती. दिलेल्या विहीत मुदतीत रक्कम भरणा न केलेस सदर रक्कम मासिक वेतनातून/निवृ-ती वेतनातून वसूल करणेबाबत प्रस्तावित करणेत येईल याची कृपया नोंद घेण्यात यावी."
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> (Quoted from page 21 of OA)

Grounds for challenge:

5. Learned Advocate for the Applicant contends in paragraph 7(2), 7(3) and 7(4) of the OA as under:-

> *"2. The disciplinary authority did not impose the punishment of recovery of interest from the salary of the Applicant. Therefore the action of Respondent Nos.3 and 4 is per se illegal. The applicant further submits that the punishment imposed upon the applicant was permanently withholding three increments. Therefore, the Respondent Nos.3 and 4 have not authority to amend or modify and add to the punishment already imposed by the disciplinary authority.*

3. The applicant has been subjected to Doubled jeopardy. The applicant is already undergoing a punishment after holding the enquiry by the competent authority on the charge of misappropriation of funds. Thus, by way of punishment three increments of the applicant have been permanently withheld. Therefore, the recovery of interest on the misappropriated funds amounts to second penalty based on the same cause of action and the charges. Thus, when the applicant was already awarded a punishment no further punishment of recovery of interest can be awarded against the applicant. Thus, such action on the part of the Respondents is contrary to the provisions of law. A copy of the charge sheet issued to the applicant and the reply submitted by the applicant is annexed hereto and marked as Exhibit-G.

4. The Applicant submits that before the recovery of the interest from his salary no show cause notice was issued to him. Thus, it is a clear cut case of violation of principles of natural justice. The order of recovery has been issued ex parte without hearing the applicant on the said issued."

(Quoted from page 9-10 of OA)

6. The Ld. Advocate for the Applicant relies on para 6 the judgment of the Hon'ble Bombay High Court at Goa in Writ Petition No.179 of 2015 Shri Vinod Vasudev Malvankar Vs. State of Goa & Ors., which reads as under:

"6. We have given our thoughtful considerations to the rival contentions. On perusal of the Award passed by the learned Tribunal, there is no direction to the Petitioner to pay any specific amount as contended by the learned Addl. Government Advocate appearing for the Respondents. The fact that no show cause notice was issued to the Petitioners before affecting such deduction has also not been disputed by the learned Addl. Government Advocate. it is also not in dispute that an inquiry which was initiated by the Respondents on account of misconduct has ended in favour of the Petitioner and all the charges were accordingly dropped. Even whilst disposing of such proceedings, there was no direction to the effect

that any amounts would be recovered from the Petitioners. In such circumstances, as the disputed deductions have been effected without any show cause notice nor reflected in the orders referred to herein above, we find that such recovery by the Respondents by order dated 23.4.2010, cannot be sustained and deserves to be quashed and set aside."

Rebuttal by Learned P.O.:

7. According to learned P.O. when the Applicant has admitted the charges, issuing separate show cause notice to him is considered futile. In support of him he relies on the judgment of the Hon'ble Supreme Court in case of S. Govindaraju Vs. Karnataka SRTC, (1986) 3 SCC 273 : 1986 SCC (L&S) 520, relevant portion of which reads as under :-

"*If the criteria required for arriving at an objective satisfaction stand fulfilled, principles of natural justice may not have to be complied with, especially when such compliance will be an empty formality."*

8. Learned P.O. also relies on the judgment of the Hon'ble Supreme Court in the case of Ashok Kumar Sonkar Versus Union of India and Others, Civil Appeal No.4761 of 2006, decided on February 23, 2007, relevant portion of which reads as under :-

"26. This brings us to the question as to whether the principles of natural justice were required to be complied with. There cannot be any doubt whatsoever that the audi alteram partem is one of the basic pillars of natural justice which means no one should be condemned unheard. However, whenever possible the principal of natural justice should be followed. Ordinarily in a case of this nature the same should be complied with. Visitor may be given situation issued notice to the employee who would be effected by the ultimate order that may be passed. He may not be given an oral hearing, but may be allowed to make a representation in writing.

27. It is also, however, well settled that it cannot put any straitjacket formula. It may not be applied in a given case unless a prejudice is shown. It is not necessary where it would be a futile exercise.

28. A court of law does not insist on compliance with useless formality. It will not issue any such direction where the result would remain the same, in view of the fact situation prevailing or in terms of legal consequences. Furthermore in this case, the selection of the appellate was illegal. He is not qualified on the cut-off date. Being ineligible to be considered for appointment, it would have been a futile exercise to give him an opportunity of being heard."

9. Ld. PO points out that the judgment of the Hon'ble High Court in V.V. Malvankar (supra) referred to by the Advocate of the Applicant, is not relevant because the facts were in favour of the petitioner in that case. However in the present case penalty was imposed and charge was proved. He contends that the reason for not issuing notice for recovery of interest was because of the admission by the Applicant of using amount of more than twenty lakh rupees for personal use for a period of three years. He quotes from the admission made by the Applicant which is as under:

"मुद्दा क्र.१) मी दिनांक १९/४/२०१० रोजी प्रथम नियुक्तीने हजर झालो आहे. हजर झाल्यानंतर मला काही दिवसातच रितसरपणे लेखा शाखेचा कार्यभार देण्यात आला होता.

मद्दा क्र.२) या कार्यालयास जमा होणारी महसूलाची रक्कम माझ्याकडे जमा होत होती. त्याच वेळेस माझ्याकडे तिलारी शीर्षकामे उपविभाग क्र.३ कोनाळकट्टा या कार्यालयाचा अतिरीक्त कार्यभार सोपविण्यात आला. त्याच कालाविधत माझी पत्नी गंभीर आजाराची रुग्ण असल्याने माझी मानसिक परिस्थिती पूर्णपणे गोंधळलेली व तणावाची होती.

दोन्ही उपविभागाचा कार्यभार व पत्नीचे आजारपण यातणावामुळे सदर रक्कम विभागीय कार्यालयात भरणा करण्याचे राहून गेले.

मुद्दा क्र.३) सदर शासकिय रक्कम स्वत:जवळ बाळगणे हा गून्हा आहे व तो अपहार ठरु शकतो याची मला जराही कल्पनानसल्यामुळे ती रक्कम माझ्याजवळ बाळगली. ही चुक माझ्या शासकीय सेवेत नविन असल्यामुळे व शासकीय नियमांची पुरेशी माहिती नसल्यामुळे झाली आहे.

महोदय या संपूर्ण घटनाक्रमामध्ये माझे तत्कालीन उपविभागीय अधिकारी/ अभियंता शाखा अभियंता यांचा कसलाही सहभाग नसुन यासर्व प्रकारास मी एकटा जबाबदार आहे.

मुद्दा क्र.४) ज्ञापनातील मुद्दा क्र.३ नुसार मी सर्व आरोप कबुल करित आहे. त्यामुळे मी आपणांस अशी विनंती करतो की, मला सर्व आरोप मान्य असल्यामुळे माझ्या तत्कालीन उपविभागीय अधिकारी/अभियंता /शाखा अभियंता यांची विभागीय चौकशी वकरण्यात येऊ नये."

(Quoted from page 96 of OA)

The Learned P.O. therefore, contends that the recovery of interest is legal and there should not be any relief to the Applicant as prayed by him.

Issue for consideration:

10. In view of the foregoing the issues for consideration are:

(1) Whether recovery of interest on the amount of Rs.20,23,770/- is illegal?

(2) Whether recovery of interest apart from the non deposited amount is a case of double jeopardy?

(3) Whether recovery of interest without issuing show cause notice amounts to violation of the principles of natural justice of the applicant?

Discussion and findings with reasons:

11. As per the facts mentioned above the Applicant had kept the amount of Rs.20,23,770/- with himself and did not deposit the rent amount as per the procedure. He claims that he was not aware of the procedure and the rules not to keep the revenue amount in his personal custody for a long period. Initially after he admitted the lapse the interest of 18% was levied against him. However, taking a lenient view the department reduced the same to 11.50%. The interest viz. Rs.92,203 is being recovered in nineteen monthly installments. First installment of Rs.2203/- and ten installments of Rs.5000/- have been recovered and remaining eight installments of Rs.5000/- are ordered to be recovered.

12. It needs to be clarified that the recovery of the interest is not by way of punishment. It is refunding of the interest which the Applicant would have been charged by any bank if he had used this amount for the involved period. The presumption is, he has kept the amount and thus prevented the government from earning the said interest. It is a case when the Applicant has been directed to refund this interest already accumulated and usurped by him. This cannot be construed as punishment. As emphasized by the judgments of the Hon'ble Supreme Court in S. Govindaraju (supra) and Ashok Kumar Sonkar (supra), even if notice was given to him, the outcome would not have changed, since the Applicant concedes that he had kept the amount with him and used it for a prolonged period. At the time of starting the DE, the Respondent has focused on firstly recovering the government revenue amount and ensuring that such incident does not get repeated. As a result if the notice did not refer to refund of interest on the same amount, it cannot be treated as illegal. After the Applicant admitted his default, and refunded the principal amount, the audit has justifiably underlined the need to

recover interest on the amount used by the Applicant for a prolonged period without any valid reasons. It is significant to note that the interest has been charged from the Applicant as well as two others. For these reasons, I conclude that recovery of the interest cannot be treated as illegal. Recovering this interest is not a case of double jeopardy. Recovery of interest without issuing notice does not amount to violation of natural justice of the Applicant.

13. Hence, I do not find any illegality in the impugned order and therefore interference in the same by this Tribunal does not appear to be necessary. O.A. is, therefore, dismissed without costs.

Sd/-
(P.N. Dixit)
Member (A)
13.8.2018

Dictation taken by: S.G. Jawalkar.

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