

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.852 OF 2016

DISTRICT : SOLAPUR

Dr. Avinash R. Devale,)
Age 55 Years, Live Stock Development Officer,)
R/at 107+108/15, 'Govindalaya', Pratiknagar,)
Murarji Peth, Solapur)..Applicant

Versus

1. The State of Maharashtra,)
Through Chief Secretary, Mantralaya, Mumbai)
2. Principal Secretary,)
Agriculture, Dairy Development, Animal)
Husbandry & Fisheries Department,)
Mantralaya, Mumbai)
3. Smt. Pranali Chitnis,)
Regional Departmental Enquiry Officer,)
Pune Division, Pune)..Respondents

Smt. Punam Mahajan – Advocate for the Applicant

Smt. K.S. Gaikwad – Presenting Officer for Respondents No.1 & 2

Shri S.S. Dere – Advocate for Respondent No.3

CORAM : Smt. Justice Mridula Bhatkar, Chairperson
Smt. Medha Gadgil, Member (A)

RESERVED ON : 25th July, 2023

PRONOUNCED ON: 7th August, 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, Smt. K.S. Gaikwad, learned Presenting Officer for Respondents No.1 & 2 and Shri S.S. Dere, learned Advocate for Respondent No.3.

2. The applicant working as Live Stock Development Officer, who retired on 31.10.2019, challenges the validity of the departmental enquiry on the ground that it is based entirely on his statement that he pleaded guilty and in the same breath he retracted from his earlier statement. The applicant therefore prays that the Departmental Enquiry (DE) should be quashed and set aside.

3. Ld. Advocate for the applicant argues that the Enquiry Officer (EO) cannot proceed with the enquiry by treating the charges as admitted by the applicant. The statement dated 20.6.2016 cannot be treated as admission of charges by the applicant as the applicant had immediately submitted that he had made this admission by mistake. Ld. Advocate for the applicant further argues that the Presenting Officer has to prove the charges leveled against the applicant by leading evidence.

4. Ld. Advocate for the applicant has submitted that the departmental enquiry is based on the admission of charges by the applicant. No witnesses are examined. Ld. Advocate for the applicant has submitted that the matter cannot be remanded back because the case pertains to the year 2015, although 8 years are over and the applicant had already retired in the year 2019. However, criminal case is pending against the applicant. Remanding the matter may be time consuming and the applicant will have to face the hardship since he has already retired in the year 2019 and the enquiry will take time for finality.

5. Ld. PO relied on the affidavit dated 23.9.2016 filed by Shri Shashank Madhav Sathe, Deputy Secretary, Agriculture, Animal Husbandry, Dairy Development and Fisheries Department, Mantralaya, Mumbai. Ld. PO pointed out that as the applicant had denied the charges the enquiry officer was appointed to conduct the DE. She pointed out that although the enquiry officer had recorded the statement of the applicant stating that he had accepted the charges mentioned in the charge sheet at the time of recording his statement he had stated that this was by mistake. The applicant by his letter dated 11.7.2016 asked permission from the enquiry officer to appoint a Friend Officer to conduct the DE and the permission had been given to him by the enquiry officer. The facts were also explained to the Friend Officer by the enquiry officer. She further stated that the DE was conducted in accordance with the procedure laid down under Rule 8 of the MCS (Discipline & Appeal) Rules, 1979 and full opportunity was given to the applicant to defend himself. In the meanwhile the applicant has filed the present OA and interim relief was granted by order dated 19.8.2016, which reads as under:

“I direct that till next date, the final order shall not be made by the Enquiry Officer relying on the answer to the third unnumbered question in Annexure ‘A-6’ (Page 33). On the next date, the Respondents shall make sure that the record from the Enquiry Officer is also produced before this Bench.”

6. Accordingly the department has not taken any action in view of the above interim order passed by this Tribunal.

7. Shri S.S. Dere Ld. Advocate for Respondent No.3, who is the Enquiry Officer, has submitted that he has completed the enquiry and submitted the report to the Disciplinary Authority.

8. We feel that the Enquiry Officer is not a necessary party and she is discharged.

9. We have heard both the sides. While going through the report of the enquiry officer it is seen that she relied heavily on the admission of guilt by the applicant which was subsequently retracted. It appears that no other witnesses were examined in this case. However, she relied on the documents of the case as well as his admission of guilt which was retracted. In the meanwhile this Tribunal restrained respondent no.3 from proceeding with the DE till final decision in this OA. In this case it is clear that there is heavy reliance on the admission of guilt which was immediately retracted in same breath. In the interest of justice we are of the view that in this matter the enquiry should be conducted afresh by examining all the witnesses giving the applicant a fair chance to submit his case. Hence, we pass the following order.

10. We direct the Respondent No.2 to start the enquiry afresh from the stage of recording of statement of the applicant with reference to the charges. The enquiry should be completed within a period of four months from today. The applicant has retired in 2019. We direct the Respondent No.2 to ensure that the DE is completed within the stipulated time. With these directions the Original Application is disposed off. No orders as to cost.

Sd/-

(Medha Gadgil)
Member (A)
7.8.2023

Sd/-

(Mridula Bhatkar, J.)
Chairperson
7.8.2023

Dictation taken by: S.G. Jawalkar.