

-MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 325 OF 2012

DIST. : AHMEDNAGAR

Ratan s/o Anandrao Surudkar,
 Age. 50 years, Occ. Nil,
 R/o Newasa Fata, Ahmednagar.

-- APPLICANT.

VERSUS

1. The State of Maharashtra,
 (Copy to be served on C.P.O.,
 M.A.T., Bench at Aurangabad)
2. The Divisional Commissioner,
 Nasik Division, Nasik
 (Revenue Branch).
3. The Collector,
 Ahmednagar, Dist. Ahmednagar.
4. Tahsil Office, (through Tahsildar),
 Newasa, Dist. Ahmednagar.
5. Tahsil Office, (through Tahsildar),
 Akole, Tal. Akole,
 Dist. Ahmednagar.

-- RESPONDENTS

APPEARANCE : Smt. Amruta P. Paranjape, learned
 Advocate holding for Shri P.S. Paranjape,
 learned Advocate for the Applicant.

: Smt. Priya R. Bharaswadkar, learned
 Presenting Officer for the Respondents..

CORAM : Hon'ble Shri Rajiv Agarwal, Vice Chairman
AND

Hon'ble Shri J.D. Kulkarni, Member (J)

DATE : 20-10-16

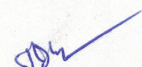
J.S.

JUDGMENT**{PER : HON'BLE SHRI J.D. KULKARNI, MEMBER (J)}**

1. The applicant in this O.A. – Shri Ratan Anandrao Surudkar – was serving as a Naib Tahsildar. On 9.6.2010, the applicant was kept under suspension, since a crime was registered against him u/s 7, 12, 13 (1) (D) r/w 13 (2) of the Prevention of Corruption Act, 1988 and a departmental enquiry (hereinafter referred as D.E.) was contemplated against him. Accordingly, the D.E. was initiated against the applicant vide order dated 12.12.2011 and even the Enquiry Officer was also appointed on 7.2.2012.

2. Being aggrieved by initiation of the D.E., the applicant approached this Tribunal. Initially it was prayed that the order dated 12.12.2011 initiating the D.E. against the applicant be quashed and the said D.E. be stayed during the pendency of criminal trial against the applicant on the same charges. The criminal case was pending before the Special Court, Shrirampur, Dist. Ahmednagar.

3. During the pendency of the O.A., the applicant came to be acquitted in Special Case no. 17/2011 by the learned Special



Judge (A.C.B.), Shrirampur vide judgment and order dated 18.11.2013. The applicant, therefore, amended the O.A. and prayed that the respondents be directed to regularize the suspension period into the regular service period and release the difference of salary between subsistence allowance and regular pay and to re-fix the salary of the applicant on the date of resuming after the suspension period was withdrawn and to pay the arrears with interest.

4. The learned Advocate for the applicant submits that the charges framed in the D.E. and those he was facing in the criminal trial are similar and since the applicant is now acquitted for the criminal charges, nothing remains in the D.E. and, therefore, the D.E. be quashed and his suspension period be regularized.

5. The res. nos. 4 & 5 have filed their affidavit in reply and submitted that the D.E. was initiated against the applicant considering the serious charges framed against him. It was alleged that the applicant demanded and accepted the bribe of Rs. 5,000/- from one Shri Daud Suleman Shaikh and was caught raid-handed by the Anti Corruption Bureau (A.C.B.). As per rule 8 (5) (A) of the M.C.S. (Discipline & Appeal) Rules, 1979


Handwritten signature

a charge sheet has been served upon the applicant and the Enquiry Officer has been appointed. The Regional Departmental Enquiry Officer, Nashik Division, Nashik has been appointed as a Enquiry Officer in the said D.E. and it is pending till this date. There is no intentional delay in conducting the D.E.

6. We have heard Smt. Amruta Paranjape, learned Advocate holding for Shri P.S. Paranjape, learned Advocate for the applicant and Smt. Priya R. Bharaswadkar, learned Presenting Officer for the respondents. We have also perused the various documents placed on record.

7. The learned Advocate for the applicant submits that the charges in the D.E. and those in criminal trial are same and the applicant has been acquitted in the criminal trial and, therefore, there remains nothing in the D.E. and it will be a futile exercise to complete the D.E. She further submitted that, though the charge is framed in the D.E. long back, till today nothing has happened except the appointment of Enquiry Officer and, therefore, it will be a futile exercise to continue the D.E.

8. The learned Advocate for the applicant invited our attention to one judgment delivered in the case of **AMAR NATH DUBEY VS. UNION OF INDIA & ORS.** delivered on '24



November, 2015 by Member (J) & Member (A), Chandigarh in O.A. no.063/0077/15 (copy of which is placed on record of present O.A.), wherein in the similar circumstances the Court has observed that, if the D.E. is initiated on the same charges, which were tried in the criminal case and the employee is acquitted in the criminal trial, the Department cannot be allowed to continue with the D.E.

9. The learned Advocate for the applicant submits that, in the present case the applicant has been acquitted on merits and the charges in the criminal case as well as in the D.E. are same.

10. The material point, therefore, to be considered in this O.A. is whether the continuance of the D.E. in view of the acquittal of the applicant in the criminal trial is legal and proper ?

11. We have considered the charges, which are framed against the applicant in the D.E. The substantive charge framed against the applicant in the D.E. is as under :-

“श्री. रतन आनंदराव सुरडकर यांनी दिनांक ०२/०२/२०१० पासून नायब तहसिलदार (संगोयो) या पदावर तहसिल कार्यालय नेवासा येथे कार्यरत असतांना खालीलप्रमाणे गैरवर्तन केले आहे.

SDH

श्री. दाऊद सुलेमान शेख, रा. वडाळा बहिरोबा ता. नेवासा यांनी सन १९८४ साली वडाळा बहिरोबा येथील ग. नं. २००/४ क्षेत्र १ हे ०३ आर जमीन खरेदी केलेली आहे. अंदाजे १० वर्षांपासून सदर जमीनीचे ७/१२ उता-यावर जमीन कसणारे सदरी व पिक पहाणीसदरी श्री. शेख यांचे नावाची नोंद करण्यात आलेली नाही. यास्तव श्री. शेख यांनी त्यांचे मालकीची मौजे वडाळा बहिरोबा येथील वर्ग २ ची जमीन ग.नं.२००/२, २००/३ व २००/४ चे ७/१२ उता-यावर पिकपहाणी लावणेसाठी अर्ज केला होता. श्री. दाऊद शेख यांनी दिलेल्या अर्जावरून पिक पहाणी केस क्रमांक ६/२०१० श्री. आर. ए. सुरडकर, ना.त. (संगांयो) त.का. नेवासा यांचेकडेस देणेत आली होती. दिनांक ०१/०४/२०१० रोजी तलाठी वडाळा बहिरोबा, नायब तहसिलदार श्री. सुरडकर व त्यांचे सहाय्यक गायकवाड हे तक्रारदार यांचे वडाळा बहिरोबा येथील शेतात गेले. त्यांनी शेतीची पंचासमक्ष पहाणी केली, पंचनामा केला. पंचनामा झालेनंतर श्री. आर.ए.सुरडकर, संगायो ना.त., त.का. नेवासा व त्यांचे सहा. गायकवाड यांनी तक्रारदार यांना रुपये २०,०००/- लाचेची मागणी केली. तक्रारदार यांनी रुपये ५,०००/- उसनवार घेऊन श्री. सुरडकर यांना दिले. उर्वरित रक्कमपैकी रुपये १०,०००/- हे दिनांक ०६/०४/२०१० रोजी देण्याचे ठरले. त्याबाबतची तक्रार श्री. दाऊद शेख यांनी लाचलुचलत प्रतिबंधक विभागाकडेस दिनांक ०५.०४.२०१० रोजी नोंदविली होती.

उक्त अनुषंगाने दिनांक ०६.०४.२०१० रोजी १५.५० वाजता श्री. सुरडकर यांचेवतीने रक्कम रुपये १०,०००/- स्विकाररतांना खाजगी इसम श्री. उत्तम बाबासाहेब गरगडे, रा. नेवासा यांना रंगेहाथ पकडणेत आले आहे. प्रकरणी लाचलुचपत प्रतिबंधक कायदा कलम १९८८ चे कलम ७, १२, १३ (१)(ड) सह १३ (२) अनुसार नेवासा पोलिस स्टेशन येथे दाखल गु.र.नं. २६/२०१० मध्ये श्री. सुरडकर यांना दिनांक ०६.०४. २०१० रोजी १९.४५ वाजता अटक करणेत आली आहे. सदर सापळा

प्रकरणाबाबत तहसिलदार नेवासा यांनी त्यांचेकडील दिनांक ०६.०४.२०१० चे पत्रान्वये इकडेस अहवाल सादर केला आहे. उक्त प्रकरणाचा यशस्वी लाचे च्या सापळ्याचा विशेष अहवाल पोलिस उपअधिक्षक, अँटी करप्शन ब्युरो अहमदनगर यांनी त्यांचेकडील दिनांक ०७.०४.२०१० अन्वये इकडेस सादर केला आहे.

उक्त कृतीचे अवलोकन करता श्री. आर.ए.सुरडकर, संगायो ना.त. (निलंबित) त.का. नेवासा यांनी महाराष्ट्र नागरी सेवा (वर्तणूक) नियम १९७९ चे नियम ३ चा भंग केला आहे. यास्तव श्री. आर.ए.सुरडकर हे महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम १९७९ चे नियम ८ अन्वये शिस्तभंगविषयक कारवाईस पात्र आहेत.”

12. We have also perused the judgment dated 18.11.2013 delivered by the learned Special Judge (ACB), Shrirampur, in Special Case no. 17/2011. The said case was filed for the trial of offences punishable u/s 7, 12, 13 (1) (d) r/w 13 (2) of the Prevention of Corruption Act, 1988. Considering the allegations, the learned Special Judge was pleased to frame points for determination in special case and after appreciating the evidence recorded his findings thereon. The relevant charges to this O.A. findings thereon are as under :-

POINTS

2. Whether it is proved by the prosecution that on 6.4.2010 at 3.50 p.m. the accused No. 1 Ratan Suradkar being a public servant accepted Rs. 10,000/- from complainant

FINDINGS

... Not proved

dm

PW4 Daud Suleman Shaikh through accused No. 2 Uttam Gargade for effecting entry of his name in crope column of Gat No. 200/4 of village Wadala-Bahiroba, as gratification other than legal remuneration as a motive or reward for doing official act in exercise of his official functions and thereby committed an offence punishable under Section 7 of the Prevention of Corruption Act, 1988?

4. Whether it is proved by the prosecution that accused No. 1 Ratan Suradkar being a public servant by corrupt and illegal means accepted Rs. 10,000/- from PW4 Daud Suleman Shaikh through accused No.2 Uttam Gargade as gratification other than legal remuneration, for doing the official act amounting to criminal misconduct punishable under Section 13(1)(d) r.w. 13(2) of the Act, 1988?

... Not proved

13. From the aforesaid points & findings thereon it will be clear that, the charges framed in the D.E. as well as points framed for determination in the criminal trial, are the same.

14. The list of the witnesses to be examined in the D.E. shows that the Department is going to examine 7 witnesses, which are as under :-

- “(१) श्री. विजय धोपावकर, पोलिस उप अधिक्षक अँटी करप्शन ब्युरो अहमदनगर
 (२) श्री. एम.एस.गोसावी, निवडणूक नायब तहसिलदार तहसिल कार्यालय नेवासा
 (३) श्री. दाऊद सुलेमान शेख, रा. वडाळा बहिरोबा ता. नेवासा

dm

- (४) श्री. उत्तम बाबासाहेब गरगडे, रा. वरखेड, ता. नेवासा जि. अहमदनगर
 (५) श्री. इमरान कुतुबुददीन शेख, कनिष्ठ सहाय्यक, जिल्हा परिषद अहमदनगर
 (६) श्री. सतिश दगडू वाघ, कनिष्ठ सहाय्यक, जिल्हा परिषद अहमदनगर
 (७) श्री. अशोक कायगुडे, शिपाई संगोयो शाखा, तहसिल कार्यालय नेवासा”

15. In the criminal trial also the prosecution examined almost same witnesses. The prosecution has examined P.W. I - ~~Shri Ratan Anandrao Suraskar~~ ^{Rupesh Vasantao Lakare} Shri Rajendra Maruti Bengale, Shri Dadasaheb Raghunath Gite, Shri Madhav Gaikwad, Shri Imran Kutubuddin Shaikh, Shri Daud Suleman Shaikh, Dy. S.P. Shri Dhopaokar and Shri Satish ^{* Dagdu} ~~Dagdi~~ Wagh as the witnesses.

16. From the aforesaid circumstances, it will be crystal clear that the charges framed in the D.E. are same and the witnesses examined in the criminal trial and those which are to be examined in the D.E. are same. In the circumstances, the D.E. is being proceeded on the same set of facts. In the criminal trial, the applicant has been acquitted honourably. The learned Special Judge has come to the conclusion that, there is no substantive evidence as regard of demand of bribe or acceptance of bribe money by the applicant, who was accused in the criminal trial. The Special Judge observed that considering the evidence of prosecution witnesses, it reveals that, none of the accused was involved in demand or acceptance of bribe amount

*
 corrected as
 per order of
 Hon'ble Member
 (S) dt. 22/11/16.

PWS
 R
 23/11/16.

SSM

and, therefore, accused persons including the applicant were acquitted. In such circumstances, continuance of the D.E. on the similar facts will not be legal and proper.

17. The learned Advocate for the applicant has invited our attention to one G.R. issued by the Govt. of Maharashtra dated 3.4.2000, which is placed on record at paper book pages 75 to 79 (both pages inclusive). This G.R. says that, in case there is criminal trial against the employee under the prevention of Corruption Act, the proceeding in the D.E. shall be kept pending till the decision of the criminal trial.

18. Admittedly, if on the same set of facts, an employee is being charged and tried in the D.E. and criminal case, it is expected that the result of D.E. shall always be subject to the decision in the criminal trial. In this case when the applicant has been honourably acquitted in the criminal trial, it will not be in the interest of justice to again initiate D.E. against him even after acquittal or to continue with the D.E.

19. In **Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and another (1999) 3 SCC 679 : [1999 (2) SLR 338(SC)]**

the Hon'ble Supreme Court has delineated the principles on the desirability of continuing disciplinary proceedings during the

JAM

pendency of the criminal proceedings. The parameters of judicial intervention are set out in para 22. They read as under:

“22. The conclusions which are deducible from various decisions of this Court referred to above are:

- (i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.
- (ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.
- (iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet.
- (iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the

jm

departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

- (v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest."

In view of the facts already discussed hereinabove, it is clear that in the present case the D.E. is yet to be initiated except appointing the Enquiry Officer on 7.2.2012. The applicant has already been acquitted in criminal trial on the same charges and ~~(has already retired and)~~ in such circumstances continuation of D.E. is not desirable.

* Deleted as per order of Hon'ble Member (J) dt. 22/11/16.

PWB
R
23/11/16

20. In the present case the charges were framed against the applicant in the D.E. long back vide letter dated 12.12.2011 and till today nothing has happened except that Enquiry Officer was appointed. In such circumstances, continuation of D.E. will be nothing but a futile exercise and, therefore, D.E. against the

Shan

applicant is required to be quashed and set aside. Hence, we pass following order :-

ORDER

- (i) The O.A. is allowed in terms of prayer clause (B).
- (ii) The respondents are directed to regularize the suspension period of the applicant in view of his acquittal in the criminal trial and to pay all difference of wages between subsistence allowance and regular pay and all other consequential benefits such as releasing of annual increments, re-fixing of salary etc.
- (iii) The aforesaid exercise shall be complied within 3 weeks from the date of this order.

There shall be no order as to costs.

MEMBER (J)

VICE CHAIRMAN (A)

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 325 OF 2012

**[CIRCULATION OBTAINED BY THE LEARNED ADVOCATE
FOR THE APPLICANT FOR SPEAKING TO MINUTES]**

[Shri Ratan Anandrao Suradkar Vs. The State of Mah. & Ors.]

CORAM : Hon'ble Shri J.D. Kulkarni, Member (J)
(This matter is placed before the Single Bench
due to non-availability of Division Bench.)

DATE : 22.11.2016.

ORAL ORDER:

Heard Mrs. Amruta Paranjape, learned Advocate holding for Shri P.S. Paranjape – learned Advocate for the Applicant and Smt. Resha S. Deshmukh – learned Presenting Officer for the respondents.

2. The Circulation in the present O.A. No. 325/2012 has been obtained by the applicant for speaking to minutes.

3. The learned Advocate for the applicant pointed out ~~that~~ some typographical mistakes from which it seems that in paragraph No. 15 the name of the witness examined i.e. PW 1 has been mentioned as, “Shri Ratan Anandrao Suradkar” and it shall be “Rupesh Vasantrao Lakare”. In the same para in the last line the name of “Shri Satish Dagdi Wagh” is mentioned and it shall be “Shri Satish Dagdu Wagh”. Both mistakes seem to be typographical, and hence, the same are required to be corrected. Similarly, in the sub-para of paragraph 19 of the judgment, it has been mentioned “and has already retired”. It is stated that the applicant is very

// 2 //

much in service, and therefore, the same words are required to be deleted.

4. I am satisfied that the necessary corrections are required to be carried out in the original order passed by this Tribunal on 20.10.2016. Hence, the said corrections shall be carried out accordingly and the certified copy shall be issued accordingly. If the copies are already issued, the same be corrected by the Registrar of this Tribunal Bench at Aurangabad.

MEMBER (J)

22.11.2016-HDD(DB).doc