

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
REVIEW APPLICATION NO.13/2020
IN ORIGINAL APPLICATION No. 698/2019 (S.B.)

Archana Madukar Parlewar,
aged about 49 years, Occ. Service,
present address PSI Colony, Arjun Nagar,
Amravati.

Applicant.

Versus

- 1) State of Maharashtra,
through its Secretary,
Department of Urban Dev,
Mantralaya, Mumbai.
- 2) Director of Town Planning,
State of Maharashtra,
Central Building, Pune-1.
- 3) Secretary,
Maharashtra Public Service Commission,
Mumbai-32.
- 4) Dy. Secretary,
Central Administration Department,
Mantralaya, Mumbai.

Respondents.

Shri N.R. Saboo, Advocate for the applicant.

Shri A.M. Khadatkhar, P.O. for the respondents.

**Coram :- Hon'ble Shri Shree Bhagwan,
Vice-Chairman.**

Date of Reserving for Judgment : 21st January,2021.

Date of Pronouncement of Judgment : 1st February, 2021.

JUDGMENT

(Delivered on this 1st day of February,2021)

Heard Shri N.R. Saboo, Id. Counsel for the applicant and Shri A.M. Khadatkar, learned P.O. for the respondents.

2. In O.A.No. 698/2019 the applicant was appointed as Town Planner as per recommendation of MPSC in the batch on 06/09/1999. The applicant has challenged the order dated 01/07/2019 passed by respondent no.1, State of Maharashtra at Annex-A-1 whereby vide order dated 01/07/2019 the applicant was awarded punishment of brining down her present pay in the time scale as on 01/01/2006 for next three consecutive years is imposed.

3. The applicant also raised various grounds regarding delay in taking decision to award punishment on 01/07/2019, on the basis of enquiry reports dated 21/01/2010 and 20/09/2012. The matter was finally heard by the Bench and decided on 09/07/2020.

4. In this Review Application, it is submission of the applicant that when O.A. was decided by this Bench correct position of law was not placed before the bench. The learned counsel for the applicant invited our attention to the Judgment of Judgment of **Hon'ble High Court, Jharkhand in the case of Rajesh Kumar Vs. Steel Authority of India Ltd. delivered on 19.03.2010.** It is marked Exh-X for the

purposes of identification. He has mainly relied on para no. 5.2 and para nos. 12 & 13 where in identical situation co-accused were given different punishment and applicant was given different punishment. Hon'ble High Court of Jharkhand has given findings in para no. 5.2 and para nos. 12 & 13 on which the Id. counsel for the applicant has mainly relied which are as under –

“5.2 The next leg of the argument advanced by the counsel for the petitioner is that even otherwise, the petitioner has been seriously discriminated even in the matter of punishment imposed on him in as much as, though the charges were almost identical against the petitioner and the two other co-officers, but while the other two were awarded lesser punishment, the petitioner has been chosen and selected for awarding the maximum penalty of removal from service. Learned counsel argues that the quantum of punishment as inflicted on the petitioner is totally disproportionate to the charge and this aspect of the petitioner's case and the grounds taken by him in his memorandum of appeal ought to have been considered by the respondent Chairman of SAIL in proper perspective.

12. However, considering the fact that for the same charges, the other two officers who were the co-proceedees in the departmental proceeding, have been awarded lesser punishment, there appears force in the submissions of the learned counsel for the petitioner that the punishment inflicted on the petitioner is disproportionate to the charge framed against him.

13. Considering the aforesaid facts and circumstances, the impugned orders Annexure-7 and Annexure-9 are set aside and the matter is remitted back to the concerned disciplinary authority namely the Managing Director, Bokaro Steel Plant, Bokaro to reconsider the petitioner's case and take an appropriate decision on the quantum of punishment which may be imposed on the petitioner keeping in view the fact that for same/identical charges, the other two proceedees were awarded lesser punishment. A decision on the above issue should be taken expeditiously and preferably within a period of three months from the date of

receipt/production of a copy of this order and the same be effectively communicated to the petitioner”.

5. The Id. counsel for the applicant has also relied on the **Judgment of Hon’ble Supreme Court in the case of Man Singh Vs. State of Haryana, (2008) 12 Supreme Court Cases 331 delivered on 01st May, 2008**. It is marked Exh-X-1 for the purpose of identification. The Id. counsel for the applicant has mainly relied on para nos. 20, 21 & 22 of the said Judgment which are as follows -

“20. We may reiterate the settled position of law for the benefit of the administrative authorities that any act of the repository of power whether legislative or administrative or quasi-judicial is open to challenge if it is so arbitrary or unreasonable that no fair-minded authority could ever have made it. The concept of equality as enshrined in [Article 14](#) of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equals have to be treated equally even in the matter of executive or administrative action. As a matter of fact, the doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of 'fair play' and reasonableness.

21. We have, therefore, examined the case of the appellant in the light of the established doctrine of equality and fair play. The principle is the same, namely, that there should be no discrimination between the appellant and HC Vijay Pal as regards the criteria of punishment of similar nature in departmental proceedings. The appellant and HC Vijay Pal were both similarly situated, in fact, HC Vijay Pal was the real culprit who, besides departmental proceedings, was an accused in the excise case filed against him by the Excise Staff of Andhra Pradesh for violating the Excise Prohibition Orders operating in the State. The appellate authority exonerated HC Vijay Pal mainly on the ground of his acquittal by the criminal court in the Excise case and after exoneration, he has been promoted to the higher post, whereas the appeal and the revision filed by the appellant against

the order of punishment have been rejected on technical ground that he has not exercised proper and effective control over HC Vijay Pal at the time of commission of the Excise offence by him in the State of Andhra Pradesh. The order of the disciplinary authority would reveal that for the last about three decades the appellant has served the Police Department of Haryana in different capacity with unblemished record of service.

22. In the backdrop of the above-mentioned facts and circumstances of the case, we are of the view that the order of the disciplinary authority imposing punishment upon the appellant for exhibiting slackness in the discharge of duties during his visit to Hyderabad when HC Vijay Pal was found involved in Excise offence, as also the orders of the appellate and revisional authorities confirming the said order are unfair, arbitrary, unreasonable, unjustified and also against the doctrine of equality. The High Court has failed to appreciate and consider the precise legal questions raised by the appellant before it and dismissed the Second Appeal by unreasoned judgment. The judgment of the High Court, therefore, confirming the judgments and decrees of the first appellate court and that of the trial court is not sustainable. The appellant deserves to be treated equally in the matter of departmental punishment initiated against him for the acts of omissions and commissions vis-a-vis HC Vijay Pal, the driver of the vehicle”.

6. In O.A.No.698/2019 delivered on 09/07/2020 in para no. 5, it is mentioned that total 3067 NOC granted by office of Assistant Director of Town Planning, Nagpur during the period from 01.01.2000 to 12.04.2007 (which include tenure of applicant 02.02.2007 to 14.04.2007). One Committee was set up and committee recommended to regularize most of order and further observed that necessary modification in the order can be done as per MRTP Act.

7. In Original Application, applicant was awarded punishment vide Annexure-A-1, P.B., Pg. No. 42 dated 01.07.2019 and punishment part is on P.B., Pg. No. 50 which are below:-

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8. The Id. counsel for the applicant was also pointed out order dated 19.05.2017 in O.A. at Annexure-A-14, P.B., Pg. No. 198 were one Shri Vivekkumar Kalidas Gautam was also alleged to have committee some mistake and his punishment order is at P.B., Pg. No. 199 of the O.A. were only sensor has been awarded. The Id. counsel for the applicant has further pointed out punishment of Shri Rajendra Bhaurau Hele who was also with the same charges and in the same inquiry the punishment order is dated 19.05.2017 at P.B., Pg. No. 203, he has also been awarded the punishment of sensor only. The contention of the Id. counsel for the applicant is that why these people are awarding the punishment of censure and why applicant is getting the severe punishment?

9. The Government had constituted the Committee by the Urban Development Department vide its G.R. dated 18/3/2008 (A-5, P-105) in which following Members were taken –

(1) Divisional Commissioner, Nagpur Division, Nagpur (2) Chairman, NIT (3) Collector, Nagpur (4) Deputy Director, Town Planning, Nagpur (5) Deputy Director, Land Records Department (6) Assistant Director, Town Planning Department.

10. The Committee submitted its report from Page nos. 108 to 114. On page nos.112 to 114 the Committee had given its findings and while recording its findings, the Committee has recommended to regularize total cases of 3067 involved between 1/1/2000 to 12/4/2007 after following certain compliances. During this period, the applicant was incharge between 2/2/2007 to 14/4/2007 (P-188) (total 72 days) as per applicant's reply to the Director of Town Planning (A-12,P-187 to 194) of O.A. On page no.188 he has mentioned that his period was from 2/2/2007 to 14/4/2007 and during this period he had given NOC to 260 cases. The total period i.e. 1/1/2000 to 12/4/2007 so out of more than 7 years the applicant's tenure is hardly 72 days i.e. almost hardly 3% and out of total 3067 cases the applicant decision is limited to 260 cases which less than 10%.

11. Four delinquents in the said DE, like Vivek Kumar Kalidas Gautam (A-14,P-198), Shri Rajendra Bhaurao Hele (P-200) and Shri Dipti Prakash Majumdar (P201) were awarded just punishment of censure. In comparison to these people, the applicant has been awarded heavy punishment which is against the citations given by the

learned counsel for the applicant in cases of (1) **Hon'ble High Court, Jharkhand in the case of Rajesh Kumar Vs. Steel Authority of India Ltd.** delivered on 19.03.2010 and (2) Judgment of Hon'ble Supreme Court in the case of **Man Singh Vs. State of Haryana, (2008) 12 Supreme Court Cases 331** delivered on 01st May, 2008.

12. In this background and discussions in forgoing paras, it appears that there is unequal and heavy punishment has been awarded to the applicant. The punishment is not as per judicious parity and said legal Judgments.

13. In view of this, the impugned order dated 1/7/2019 (A-1, P-42 to 50) (both inclusive) of punishment awarding to the applicant is required to be re-considered by the respondents. Hence, the following order –

ORDER

(1) The impugned order dated 1/7/2019 (A-1,P-42 to 50) (both inclusive) awarding punishment to the applicant is remanded back to the respondents for re-consideration according to parity of law and settled legal Judgments within 90 days from the date of this order.

(2) The Review Application stands disposed of with above directions.

(3) No order as to costs.

Dated :- 01/02/2021.

**(Shree Bhagwan)
Vice-Chairman.**

dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Vice-Chairman.

Judgment signed on : 01/02/2021.
and pronounced on

Uploaded on : 01/02/2021.