

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT NAGPUR**

ORIGINAL APPLICATION NO.456/2018

DISTRICT : GONDIA

Shri Sunil Khushalchand Vairagade,
Age : Major, Occ : Senior Clerk (Dismissed),
Tahasil Office, Arjuni Morgaon,
Dist. Gondia.Applicant

VERSUS

- 1) The Divisional Commissioner,
Nagpur Region, Nagpur.
- 2) The District Collector,
Gondia.
- 3) The State of Maharashtra
Through its Secretary,
Department of Revenue,
Mantralaya, Mumbai-400 032. ...Respondents

**CORAM : Hon'ble Shri Shree Bhagwan, Vice Chairman
AND
Hon'ble Shri A.D.Karanjkar, Member (J)**

DATE : 10.12.2019.

ORAL ORDER:

Heard Shri H.D.Marathe, learned Advocate for the Applicant and Shri H.K.Pande, learned Presenting Officer for respondents.

2. In the present O.A., the applicant is challenging his dismissal from the service. Facts in brief are as under:

3. The applicant was serving as Senior Clerk in the office of Tahsildar, Deori, Dist. Gondia from 29-07-1997 to 17-02-2014. The applicant was placed under suspension vide order dated 11-06-2014 alleging that he had misappropriated amount of Rs.2,21,27,605/-. First Information Report was registered against the applicant in Deori Police Station and Crime No.50/2014 was registered and chargesheet came to be filed in criminal court.

4. The applicant was served with chargesheet and Enquiry Officer was appointed. The Enquiry Officer conducted the enquiry and submitted report. It is grievance of the applicant that in the absence of evidence, Enquiry Officer came to the conclusion that charges against the applicant were proved and the respondent no.2 Collector, Gondia mechanically acted upon the report submitted by the Enquiry Officer and dismissed the applicant from service. It is submitted that appeal was preferred by the applicant before the respondent no.1 but it was dismissed by the Appellate Authority without considering the merits in the appeal.

5. Respondent no.2 submitted reply which is at paper book page 89 and justified the dismissal of the applicant. It is submitted that when the fraud came to the notice, the applicant himself executed apology letter and admitted the fact that he misappropriated the amount and he would repay the amount

Rs.70,00,000/- which was in his house. It is submitted that when chargesheet was served, the copy of letter of apology containing admission of the guilt was given to the applicant and he never disputed the truthfulness of this document. Thus, it is submitted that the dismissal of the applicant is proper in view of his own admission and considering the huge amount misappropriated by the applicant by playing fraud on the Government, therefore, he is not entitled for any relief. It is also submitted that the procedure laid down in the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 is followed by the Enquiry Office and Disciplinary Authority, therefore, there is no merit in this O.A.

6. We have heard learned Counsel for the applicant and learned P.O. for the respondents. We have perused the report submitted by the Enquiry Officer.

7. Learned Counsel for the applicant has pointed out that the witnesses examined in the inquiry had no personal knowledge regarding misappropriation. It is argued by the applicant's Counsel that as none of the witnesses examined in the enquiry deposed about the misappropriation by the applicant, consequently, finding recorded by the Enquiry Officer is erroneous. It is submitted that the respondent no.2 Disciplinary Authority did not examine this aspect and

mechanically held that the amount was misappropriated by the applicant and dismissed him from the service.

8. Learned P.O. has invited our attention to the chargesheet dated 29-09-2016. It is submitted that the details of charges were given in the Annexure-2 to the chargesheet, in Annexure-3 names of the witnesses are given and in Annexure-4 description of documents relied on by the department were given. Learned P.O. invited our attention to document at Sr. No.5 in Annexure-4. The document described as letter of apology executed by the applicant on 10-06-2014. Learned P.O. has invited our attention to Annexure-2. It is submitted that the copy of this document was handed over to the applicant alongwith chargesheet and this document was before the Enquiry Office when enquiry was held. We have gone through the Annexure-2. In Annexure-2, it was specifically mentioned by the applicant that Shri Gutte had withdrawn the amount from Accounts Head 3604, 2245 in cash and once applicant accompanied Shri Gutte when this amount was withdrawn. The applicant also admitted that the cheque for Rs.50,00,000/- which was encashed was also signed by him. It was mentioned by the applicant in Annexure R-2 that he was repenting about his act and he was ready to deposit the amount of Rs.70,00,000/- in the account of the Government. Understanding was given by the applicant to Shri Gutte but he was not listening. Advice was given by the applicant to Shri Gutte for not purchasing four wheel vehicle

but he had not listen. It was mentioned by the applicant in Annexure A-2 that he was voluntarily executing this letter and requested for excuse. He also specifically mentioned that he was possessing cash amount of Rs.70,00,000/- and he would behave properly in future. It is important to note that letter No.316/2014 was written by Tahsildar, Deori. This letter was notice issued by the Tahsildar, Deori to the applicant. In this notice it was mentioned that the applicant illegally withdrawn amount of Rs.50,00,000/- after putting forged signature on the cheque and he was called upon to explain this. In letter dated 315/2014 dated 11-06-2014, information was given by Shri Chavan, then Tahsildar, Deori to Collector, Gondia that apology letter was submitted by the applicant and he acknowledged misappropriation of large amount by him and Shri Gutte and the applicant was in custody of Rs.70,00,000/-. After receiving this letter, the applicant was placed under suspension and matter was reported to the Police. It is pertinent to note that the applicant was given copies of all these letters and apology letter executed by him on 10-06-2014 as mentioned in Annexure-4 to the chargesheet.

9. The applicant has filed affidavit dated 02-08-2019 before this Bench and in this affidavit the applicant has stated as under:

"3. That, respondents are relying upon a letter allegedly written by me on 10-06-2014 which has

remarks that the said letter was written by me out of my own will, without any fear or pressure claiming apology. However, it is categorically submitted that I was forced to write such letter under force by my seniors on assurance that I would not be suspended/terminated from the service."

4. However, to the utter shock, even though I wrote such letter on insistence of my seniors, I was suspended from service on 11-06-2014."

10. After reading the affidavit of the applicant dated 02-08-2019, it is clear that the Annexure R-2 dated 10-06-2014 was written by the applicant. However, attempt is made by the applicant to withdraw the admission given in letter dated 10-06-2014, his explanation is that letter was not executed by him on his free will but he was in fear and pressure and he was forced to execute the letter by his seniors. It is pertinent to note that the applicant was aware that this letter was filed in the enquiry and its copy was given to him but in reply to chargesheet it was not made clear by the applicant that he was forced by his seniors to execute this apology letter. This is for the first time, the applicant is coming with a case that he was forced to execute the letter dated 10-06-2014 containing admission.

11. In this regard learned P.O. invited our attention to the Rojnama in the enquiry dated 02-12-2016. In paragraph 5 of

the Rojnama, it is specifically mentioned that the Enquiry Officer made enquiry with the applicant as to whether the applicant had received documents mentioned in Annexure-1, 2, 3 and 4 with the chargesheet and whether the applicant had verified the truth of the documents. In the rojnama, it is also mentioned that it was informed by the applicant that he had received certified copies of the documents and he had verified the truth of the documents.

12. We have perused the deposition of witness Dinesh Kumar Mishra who was examined in the enquiry. It has come in evidence of this witness that the applicant admitted that he was possessing amount of Rs.70,00,000/-. In reply to question no.2 asked by the Presenting Officer, answer was given by the witness that after verification of the papers, it was noticed that the amount of Rs.70,00,000/- was misappropriated and it was truth.

13. Enquiry Officer recorded statement of Shri A.D.Borkar, Senior Clerk and Shri Borkar deposed that in inspection of record of the office, it was noticed that at so many places there were erasers and this was done by the applicant and Shri Gutte. The applicant never disputed the fact that he was dealing with the matter and he was preparing cheques etc.

14. The law is that an admission given by a person is a strong piece of evidence against him provided such person has right to

explain that the admission was erroneous or he was compelled to give admission under coercion. In the present case, at the stage of arguments when query was made as to why Enquiry Officer did not consider Annexure R-2, at that time, submission was made by the applicant that he was forced to execute document by his seniors. In this regard, we would like to point out that when copy of this document was received by the applicant along with chargesheet, it was necessary for the applicant to inform this fact to the Enquiry Officer and the Disciplinary Authority that he was forced by his seniors to execute the document but it was not done.

15. It is material to note that for the first time, on 02-08-2019, the applicant is coming with a case that he was forced to execute the document on 10-06-2014 on assurance that he would not be suspended or terminated from the service. Apparently, we do not see any merit in the submission. Once execution of document is admitted by the applicant there was more burden on the applicant to explain with clarity why he gave admission in the document. The applicant is not a layman. He was aware that there was a large fraud and an amount of more than Rs.2,21,00,000/- was misappropriated. The applicant was also aware that there would be criminal prosecution and no one could protect him. The applicant was conversant with bank operations and legal matters also as he was serving in Tahsil Office. In the affidavit dated 02-08-2019,

the applicant did not give name of senior officer/officers who compelled him to execute Annexure R-2 dated 10-06-2014. On the contrary, it is seen that attention of the applicant was drawn by the Enquiry Officer to all the documents mentioned in Annexure-4 to the chargesheet and it was specifically asked to verify truth of these documents and reply was given by the applicant that he had examined authenticity of all the documents.

16. It is pertinent to note that when attention of the applicant was drawn by the Enquiry Officer to Annexure R-2 dated 10-06-2014, the applicant should have informed the Enquiry Officer that execution of the document was obtained from him by putting him in coercion. It is also important to note that the applicant was accompanied by next friend and when this query was made by the Enquiry Officer on 02-12-2016, at that time, criminal case was already registered against the applicant and he was already placed in suspension. It seems that vide order dated 11-06-2014, the applicant was placed in suspension and attention of the applicant was invited to Annexure R-2 on 02-12-2016 i.e. after about two and half years. When attention of the applicant was drawn by the Enquiry Officer to the document, at that time, the applicant was not under coercion, he must have realized the consequences of the admission given by him but he remained silent for considerable period till 02-08-2019. Under these circumstances, it is difficult to digest story

of the application that the admission given in Annexure R-2 was obtained from him after putting him in coercion. In our opinion, now the applicant is coming with a bald theory that he was forced to write Annexure R-2 under the assurance that he would not be suspended or terminated from the service. It is material to note that the applicant has not mentioned names the superior officer/officers and their designations who gave him such assurance. Thus, it seems that the lame excuse is shown by the applicant and put before the Bench a theory that document should not be used against him as a evidence.

17. In view of the above discussion fact remains that the Annexure R-2 was in the enquiry. It was valuable evidence against the applicant. Unfortunately, while writing enquiry report, Enquiry Officer did not consider it. Similarly, this document was not considered even by the Collector, Gondia. In spite of it, fact remains that evidentiary value of this document is very much high and this document is binding on the applicant. After reading the entire document, reasonable conclusion can be drawn that the applicant was aware of the fraud. He was aware that Shri Gutte was withdrawing large amount and once the applicant was also accompanying him for withdrawing the amount and admission given by the applicant that he was in custody of Rs.70,00,000/- and he would refund that amount to the Government which was also a material

evidence disclosing his participation in the fraud and it was strong evidence against the applicant.

18. In view of this nature of the evidence, considering the misappropriation of the huge Government amount of more than Rs.2,21,00,000/- it is not possible to accept that the applicant was not involved in the misappropriation of the Government money. Once it is accepted that the applicant misappropriated Government money then it has to be held that he was involved in serious criminal offence having moral turpitude.

19. Keeping in view the entire background, in our opinion, it is not suitable to interfere in the matter as there was strong evidence to prove misconduct and the punishment awarded is not disproportionate. Hence, we hold that the O.A. is devoid of merits. It is, therefore, dismissed with no order as to costs.

MEMBER (J)

VICE CHAIRMAN

YUK db o.a.456 of 2018 nagpur

I affirm that the contents of the order in PDF format are word to word same as per the original judgment.

Name of Stenographer (H.G.) : Y. U. Kamble

Court Name : Hon'ble Vice Chairman

AND

Hon'ble Member (J)

Judgment signed and pronounced on : 10-12-2019.

Uploaded on : 11-12-2019.