IN THE MAHARASHTRA ADMINISTRA TIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO 1096 OF 2017

DISTRICT : Kolhapur

SUBJECT : Removal from Service

Shri Sanjay Shankar Kerle)
Previously working as Talathi,)
R/o 49, Jaisinghrao Park,)
Kagal, Tal-Kagal,)
Dist-Kolhapur 416 216.)...**Applicant**

Versus

1. The State of Maharashtra)
Through Chief Secretary,)
Mantralaya, Mumbai 400 032.)

2. The Addl. Chief Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai 400 032.)

3. The Collector,)
Collector Office,)
Swarajya Bhavan, Nagala Park,)
Kolhapur 416 003.)

4. The Sub Divisional Officer,)
Panhala-Shahuwadi,)
Near Old Police Station,)
Panhala, Dist-Kolhapur.)

5. The Sub Divisional Officer,)
Karveer, Swarajya Bhavan,)
Nagala Park, Kolhapur 416 003.)

6. The Tahsildar,)
Karveer, Near Pudhari Press Office,)
Tal-Karveer, Dist-Kolhapur-416002)

7. The Tahsildar,)
Shahuwadi, Tal-Shahuwadi,)
Dist-Kolhapur 415 101.)...**Respondents**

Smt. Punam Mahajan, learned advocate for the Applicant.

Smt. Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

CORAM : Justice Mridula Bhatkar (Chairperson)
Shri Debashish Chakrabarty (Member-A)

RESERVED ON : 28.08.2024

PRONOUNCED ON : 28.03.2025

PER : Shri Debashish Chakrabarty (Member-A)

J U D G M E N T

1. The Applicant prays that 'Order' dated 5.2.2016 about his 'Dismissal from Service' passed by Respondent No. 4 as 'Disciplinary Authority' and 'Order' dated 22.11.2016 passed by Respondent No. 3 as 'Appellate Authority' to confirm it be declared as bad in law and quashed and set aside.

2. The learned Counsel for Applicant submitted that Applicant was working on post of 'Talathi' at 'Salshi, Tahsil Shahuwadi, District Kolhapur' when he was required to proceed on 'Medical Leave' from 16.10.2008 to 15.3.2009. The Applicant had submitted 'Leave Applications' on 16.10.2008; 4.11.2008; 19.11.2008; 2.12.2008 & 31.1.2009 along with 'Medical Certificates' to Respondent No.7.

3. The learned Counsel for Applicant then submitted that Applicant came to be placed under 'Suspension' on 4.3.2009 by Respondent No. 5 under provision of 'Rule 4(1)(a)' of 'Maharashtra

Civil Services (Discipline & Appeal) Rules, 1979' even though he was on 'Medical Leave'.

4. The learned Counsel for Applicant thereupon submitted that Applicant by letters dated 12.8.2009, 15.1.2010, 29.1.2014, 17.5.2014, 5.7.2014 and 4.8.2014 had repeatedly requested Respondent No. 7 to release arrears of 'Salary & Allowances' for period of 'Medical Leave' from 16.10.2008 to 4.3.2009 and 'Subsistence Allowance' after being placed under 'Suspension' from 4.3.2009.

5. The learned Counsel for Applicant further submitted that 'Departmental Enquiry' was later initiated against Applicant by 'Order' dated 20.11.2014 of Respondent No. 5. The 'Charge Sheet' then came to be sent routinely to Applicant by Tahsildar Kagal; District Kolhapur letter dated 24.11.2014.

6. The learned Counsel for Applicant specifically mentioned that 'Charge Sheet' dated 20.11.2014 was never served personally on Applicant. Further; it was emphasized that although Applicant was placed under 'Suspension' by 'Order' dated 4.3.2009 of Respondent No.5; the 'Departmental Enquiry' came to be initiated by Respondent No.5 for reasons unknown after period of more than 'Five Years'.

7. The learned Counsel for Applicant emphasized that 'Order' dated 05.02.2016 of Respondent No.4 for 'Dismissal from Service' of Applicant is challenged on following grounds:-

(i) The Applicant was not paid any 'Subsistence Allowance' from date of 'Suspension' on 4.03.2009 till date of 'Dismissal from Service' on 5.02.2016.

(ii) The 'Departmental Enquiry' was initiated very belatedly on 20.11.2014 and conducted 'Ex-Parte' without observing 'Principles of Natural Justice'.

(iii) The 'Order' dated 22.11.2016, passed by 'Appellate Authority' to confirm 'Order dated 5.02.2016' for 'Dismissal of Service' of Applicant was without 'Application of Mind'.

(iv) The procedures under 'Rule 8' of 'Maharashtra Civil Service (D & A) Rules, 1979' was contravened and there was inordinate delay in completion of 'Departmental Enquiry'.

(v) The Applicant was not provided with necessary documents during 'Departmental Enquiry' and even before 'Order' dated 5.02.2016 for 'Dismissal from Service' was passed by 'Disciplinary Authority'.

(vi) The 'Major Punishment' for 'Dismissal from Service' imposed on Applicant was 'Disproportionate to Charges' framed in 'Departmental Enquiry'.

8. The learned Counsel for Applicant relied on 'Affidavit-in-Rejoinder' dated 11.07.2018 of Applicant to emphasize that during 'Suspension' from 4.03.2009 onwards; Applicant had not worked anywhere. The Applicant had submitted letter dated 15.01.2010 to Respondent No.7 to specifically inform about 'Leave & License Agreement' as proof of staying at 'Salshi, Tahsil Shahuwadi, District Kolhapur' which was fixed as 'Headquarter' fixed during 'Suspension' by 'Order' dated 4.03.2009 passed by 'Respondent No.5'.

9. The learned Counsel for Applicant contended that there was gross violation of 'Principles of Natural Justice'; because Applicant was not given sufficient opportunity of being heard during conduct

of 'Departmental Enquiry' and before passing of 'Order' dated 5.02.2016 by Respondent No.4 as 'Disciplinary Authority' imposing 'Major Punishment' for 'Dismissal from Service' upon Applicant under 'Rule 5(1)' of 'Maharashtra Civil Services (D & A) Rules 1979'.

10. The learned Counsel for Applicant refuted contents of 'Affidavit-in-Reply' dated 16.4.2018 filed by 'Naib Tahsildar' in office of Respondent No.7 wherein it was stated that claim of Applicant that he had from time to time submitted 'Leave Applications' along with 'Medical Certificates' for grant of 'Medical Leave' during period from 16.10.2008 to 04.03.2009 was false and that no documentary evidence was available in office records of Respondent No.7.

11. The learned Counsel for Applicant drew attention to markings of 'Office Stamp' of Respondent No.7 as acknowledgement of 'Leave Applications' submitted although 'Medical Certificates' by Applicant to seek 'Medical Leave' during period from 16.10.2008 to 04.03.2009.

12. The learned Counsel for Applicant thereafter submitted that with respect to conduct of 'Departmental Enquiry' wrong statement was made that Applicant had been served 'Notice' dated 26.8.2015 informing him to remain present before 'Enquiry Officer' at time of 'Final Hearing'.

13. The learned Counsel contended that Applicant had immediately sent letter dated 9.9.2015 to 'Enquiry Officer' to insist that Applicant had not been given fair chance to defend himself during conduct of 'Departmental Enquiry'. The 'Enquiry Officer' had thus proceeded to conduct 'Departmental Enquiry' in violation of 'Principles of Natural Justice'. The Applicant was never given

adequate opportunity to submit 'Written Statement' as contemplated under 'Rule 8(4)' of 'Maharashtra Civil Services (D & A) Rules, 1979'.

14. The learned Counsel for Applicant specifically referred to 'Rule 8(3)', 'Rule 8(22)' & 'Rule 8(25)' of 'Maharashtra Civil Services (D & A) Rules, 1979'; to highlight specific procedures mandatorily to be observed by 'Enquiry Officer' during conduct of 'Departmental Enquiry'.

15. The learned Counsel for Applicant further referred to 'Enquiry Report' submitted by 'Enquiry Officer' to highlight that none of the '14 Articles of Charges' which were levelled against Applicant had not been enquired into diligently and strongly contended that merely because Applicant could not remain present during 'Departmental Enquiry'; whether it was open for 'Enquiry Officer' to unilaterally conclude that all '14 Articles of Charges' levelled against Applicant had been proven without holding an impartial 'Departmental Enquiry' and only considering selective 'Documentary Evidence'. Thus, the way 'Enquiry Officer' had conducted 'Departmental Enquiry' vitiates findings about all '14 Articles of Charges' framed against Applicant.

16. The learned Counsel for Applicant contended that though 'Departmental Enquiry' required all 12 'Witnesses' to depose; there was no evidence to establish that all 12 'Witnesses' had remained present during conduct of 'Departmental Enquiry' and duly examined by 'Enquiry Officer'. In fact out of '12 Witnesses' only '5 Witnesses' had only remained present before 'Enquiry Officer'; but did not depose against Applicant.

17. The learned Counsel for Applicant submitted that 'Enquiry Officer' had clearly held that there were no major irregularities

committed by Applicant; yet 'Respondent No.4' as 'Disciplinary Authority' proceeded to pass 'Order' dated 5.2.2016 for 'Dismissal from Service' of Applicant under 'Rule 5(1)' of 'Maharashtra Civil Services (D & A) Rules 1979'.

18. The learned Counsel for Applicant further contended that it was for reasons beyond control of Applicant that he could not appear before 'Enquiry Officer' during 'Departmental Enquiry'. However, it could not have been presumed by 'Enquiry Officer' that Applicant had accepted all '14 Articles of Charges'. Hence; it was incorrect to even presume that any of '14 Articles of Charges' levelled against Applicant had been established by 'Enquiry Officer'.

19. The learned Counsel for Applicant submitted that 'Departmental Enquiry' therefore had been conducted in rather biased and perverse manner by 'Enquiry Officer'. Hence; the 'Order' dated 5.02.2016 for 'Dismissal from Service' of Applicant passed by Respondent No.4 was bad in law and liable to be quashed and set aside. Even if it were to be presumed that any of 14 'Articles of Charges' levelled against Applicant had been established by 'Enquiry Officer'; even then punishment imposed was grossly disproportionate; as there were no instances of at all serious illegalities committed by Applicant. Further; even 'Enquiry Report' did not recommend that such extreme decision must be taken by 'Respondent No.4' as 'Disciplinary Authority' who passed 'Order' dated 5.02.2016 about 'Dismissal from Service' under 'Rule 5(1)' of 'Maharashtra Civil Services (D & A) Rules 1979'.

20. The learned Counsel for Applicant further emphasized that even at level of Respondent No.3 as 'Appellate Authority' there was no 'Application of Mind' at all while routinely confirming 'Order'

dated 05.02.2016 passed by Respondent No.4 as 'Disciplinary Authority'.

21. The learned Counsel for Applicant thereafter clarified that Applicant had earlier filed O.A 679/2015 with prayer to stay proceedings of 'Departmental Enquiry' as also to seek payment of 'Subsistence Allowance'. The 'Original Application No 679/2015' however was withdrawn by Applicant on 20.9.2016; as during its pendency 'Order' dated 5.02.2016 in 'Departmental Enquiry' came to be passed by 'Respondent No. 4' as 'Disciplinary Authority' for 'Dismissal from Service' 'Rule 5(1)' of 'Maharashtra Civil Services (D & A) Rules 1979'.

22. The learned Counsel for Applicant further stressed that it was not factual that Applicant never stayed at 'Head Quarter' which was fixed as 'Salshi, Tahsil Shahuwadi, District Kolhapur' by 'Order' dated 4.3.2009 of 'Respondent No.5' upon 'Suspension' of Applicant. The 'Disciplinary Authority' and 'Appellate Authority' did not appreciate the fact that he could not have continued residing at 'Head Quarters' at 'Salshi, Tahsil Shahuwadi, District Kolhapur' without ever receiving any 'Subsistence Allowance'; although he had regularly informed as well as submitted 'No Employment Certificates' to Respondent No.7.

23. The learned Counsel for Applicant thereupon strongly contended that non-payment 'Subsistence Allowance' to Applicant upon 'Suspension' by 'Order' dated 4.03.2009 of 'Respondent No.5' cannot be justified in any manner whatsoever and such intentional perverse act of Respondent No.7 had completely vitiated entire proceedings of 'Departmental Enquiry'.

24. The learned Counsel for Applicant further argued that 'Departmental Enquiry' against Applicant was completed hastily

and 'Order' dated 5.02.2016 came to be passed by Respondent No.4 as 'Disciplinary Authority' for 'Dismissal from Service'; even though it had not been established from office records as to on which specific dates they had served 'Notices of Hearing' to Applicant to attend 'Departmental Enquiry' and even thereafter Applicant had intentionally not remained present before 'Enquiry Officer'. The Applicant had in fact been served with just 'One Notice' by 'Enquiry Officer'. Hence, there was no justification at all for 'Enquiry Officer' to proceed 'ex-parte' against Applicant to hurriedly conclude proceedings of 'Departmental Enquiry'.

25. The learned Counsel for Applicant emphatically contended that it has been categorically admitted that none of '12 Witnesses' had been duly examined by 'Enquiry Officer' and there was no recording of 'Oral Evidence' against Applicant. The 'Enquiry Officer' had in fact disclosed in 'Enquiry Report' that no 'Oral Evidence' had been recorded against Applicant during 'Departmental Enquiry'.

26. The learned Counsel for Applicant submitted that burden of establishing all '14 Articles of Charges' framed against Applicant was squarely on 'Presenting Officer' along with Respondent No.4 & Respondent No.5. As none of the '14 Articles of Charges' had been established in 'Departmental Enquiry'; therefore 'Order' dated 05.02.2016 passed by Respondent No.4 as 'Disciplinary Authority' for 'Dismissal from Service' of Applicant should be quashed and set aside. The Applicant consequentially must be reinstated in service in cadre of 'Talathi' and granted all consequential 'Service Benefits'.

27. The learned Counsel for Applicant relied on following Judgments of 'Hon'ble Supreme Court of India':-

(i) JAGDAMA PRASAD SHUKLA Vs. STATE OF U.P & ORS, (2000) 7 SCC 90-Para 8.

(ii) STATE OF UTTAR PRADESH & ORS Vs. SAROJ KUMAR SINHA, (2010) 2 SCC 772-Paras 28, 30, 42 & 43.

(iii) STATA OF UTTARANCHAL & ORS Vs. KHARAK SINGH (2008) 8 SCC 236-Para 15.

(iv) BANK OF INDIA & ANR Vs. DEGALA SURYANARAYANA, (1999) 5 SCC 762-Para 11.

28. The learned PO per contra submitted that 'Enquiry Officer' was appointed on 8.4.2015 soon after 'Departmental Enquiry' had been initiated against Applicant on 20.11.2014 by 'Respondent No.5'. The 'Charge-Sheet' was also forthwith served personally upon Applicant through 'Tahsildar, Kagal' District Kolhapur on 24.11.2014; as it was found that Applicant was not staying at 'Salshi, Tahsil Shahuwadi, District Kolhapur' which was fixed as 'Headquarter' during 'Suspension' by 'Order' dated 4.03.2009 of 'Respondent No.5'. However; no specific details can now be ascertained as to how 'Charge-Sheet' dated 20.11.2024 issued by 'Respondent No.5' came to be personally received by Applicant.

29. The learned P.O fairly admitted that documents which were relied upon by 'Enquiry Officer' in 'Departmental Enquiry' could not be furnished to Applicant only because Applicant was not found to be residing at 'Salshi, Tahsil Shahuwadi, District Kolhapur' which was the 'Headquarter' fixed during 'Suspension' as per 'Order' dated 4.03.2009 of 'Respondent No.5'; but emphasized that Applicant had also never raised any objection by remaining present before 'Enquiry Officer' to furnish requisite documents nor about non-receipt of 'Charge-Sheet' dated 20.11.2014 issued by 'Respondent No.5'.

30. The learned P.O. mentioned that it was also an admitted fact that 'Subsistence Allowance' could not be paid to Applicant by Respondent No.7 only because he had never stayed at 'Salshi,

Tahsil Shahuwadi, District Kolhapur' which was fixed as 'Headquarter' during 'Suspension' by 'Order' dated 4.03.2009 of 'Respondent No.5'; but strongly defended the findings recorded by 'Enquiry Officer' and decision taken thereupon by 'Respondent No.4' as 'Disciplinary Authority' to pass 'Order' dated 5.02.2016 to impose 'Major Penalty' for 'Dismissal from Service' under 'Rule 5(1)' of 'Maharashtra Civil Services (D & A) Rules 1979'.

31. The learned P.O drew attention to contents of 'Appeal Memo' which had been filed by Applicant before 'Appellate Authority' who is 'Respondent No.3'; wherein he had admitted of having received 'Charge-Sheet' dated 20.11.2014 issued by Respondent No.5 which was served through 'Tahsildar Kagal' District Kolhapur. The Applicant upon receiving 'Charge-Sheet' on 24.11.2014 had not immediately submitted letter to 'Enquiry Officer' to stop proceedings of 'Departmental Enquiry' as he had never received any 'Subsistence Allowance' from 'Respondent No.7 during entire period of 'Suspension' from 4.03.2009. In fact, the Applicant who had earlier filed OA No.679/2015 to stay proceedings of 'Departmental Enquiry' including for payment of 'Subsistence Allowance' should have pursued it rather than with drawing it on 20.09.2016.

32. The learned PO clarified that O.A 679/2015 was filed for stay to proceedings of 'Departmental Enquiry' and seek payment of arrears of 'Subsistence Allowance'. 'O.A 679/2015' came to be withdrawn by Applicant on 20.9.2016 only on account of 'Order' dated 05.02.2016 passed by Respondent No.4 as 'Disciplinary Authority' after seeking liberty to file it afresh; which is this O.A. No. 1096/2017.

33. The learned P.O referred to 'Order' dated 22.11.2016 passed by Respondent No.3 as 'Appellate Authority'. The Applicant was

given adequate opportunity to be heard and emphasized that 'Notice of Hearing' came to be served upon Applicant. The 'Order' dated 22.11.2016 passed by Respondent No.3 as 'Appellate Authority' was well reasoned and confirmed 'Order' dated 5.2.2016 for 'Dismissal from Service' passed by Respondent No.4 as 'Disciplinary Authority'.

34. The learned P.O strongly contended that Applicant had never reported in person to Respondent No.7 after 'Order' dated 4.3.2009 passed by 'Respondent No.5' for 'Suspension' under 'Rule 5(1)' of 'Maharashtra Civil Services (D & A) Rules 1979' and Applicant had never stayed at 'Salshi, Tahsil Shahuwadi, District Kolhapur' which was fixed as 'Head Quarter' during 'Suspension Period'. The Applicant therefore had no right to claim 'Subsistence Allowance' as he had never stayed at this 'Head Quarters' during entire 'Suspension Period' nor did he personally report to Respondent No.7 to ever submit "No Employment Certificates".

35. The learned Counsel for Applicant as well as learned PO were heard at length about reasons behind long period of 'Medical Leave' availed by Applicant about extended period of 'Suspension' of Applicant and belatedly conduct of 'Departmental Enquiry' against Applicant.

36. The contents of 'Para 3' of 'Order' dated 4.3.2009 of Respondent No.5 for 'Suspension' of Applicant which was regarding 'Salshi, Tahsil Shahuwadi, District Kolhapur' being fixed as 'Head Quarters' of Applicant is reproduced below:-

> ३. "श्री. केर्ले यांचे निलंधन कालावधी मध्ये राहणेचे ठिकाण हे मौजे साळशी ता. शाहूवाडी हे ठरविणेत आलेले आहे."

37. The contents of 'Para 5' of 'Order' dated 4.3.2009 passed by Respondent No.5 for 'Suspension' of Applicant which had entitled Applicant to receive 'House Rent Allowance' is reproduced under :-

५) "त्यानां नियमाप्रमाणे घरभाडे (निलंबन कालावधीमध्ये मिळणा-या प्रमाणात) अनुज्ञेय आह"

38. The Applicant had submitted to Respondent No.7 a 'Hand Written Copy' of 'House Rental Agreement' dated 01.03.2009 as proof of staying at 'Head Quarters' fixed during 'Suspension Priod' from 04.03.2009 which was 'Village Shalshi, Tahsil Shahuwadi, District Kolhapur'. The 'House Rental Agreement' dated 01.03.2009 which was claimed to be 'Leave & License Agreement' required Applicant to pay 'Monthly Rent' of Rs. 200/- and furnish 'Security Deposit' of Rs. 5000/-. However, though it does have some similarity with format of 'Leave & License Agreements'; it was neither executed on 'Stamp Paper' nor registered under provisions of 'Maharashtra Stamp Duty Act 1958' and 'Indian Registration Act 1908'. Further, this purported 'Leave & License Agreement' dated 1.03.2009 was only for limited period of 11 Months. Hence, it cannot be considered as conclusive evidence that Applicant had indeed stayed at 'Village Shalshi, Tahsil Shahuwadi, District Kolhapur' which was fixed as 'Headquarters' by 'Order' dated 4.03.2009 of Respondent No. 5 for 'Suspension' of Applicant after initial 11 Months during entire period till completion of 'Departmental Enquiry' which had begun on 20.11.2014.

39. The Applicant had contended that he was not paid 'Subsistence Allowance' during entire of 'Suspension Period' from 04.03.2009 onwards but is this offset by admission on part of Applicant in letter dated 10.7.2014 addressed to Respondent No. 5 that he had earlier not demanded any 'Subsistence Allowance' due to ambiguity regarding 'Head Quarters' fixed by 'Order', dated 4.03.2009 of 'Respondent No.5'. The contents of 'Para 2' of letter

written by Applicant on 10.7.2014 to Respondent No. 5 with regard to 'Subsistence Allowance' is reproduced below for contextual clarity :-

> २. "तसेच माझ्या निलंबन आदेशामध्ये माझे राहण्याचे ठिकाण हे मौजे साळशी ता. शाहूवाडी असे नमूद केले आहे. परंतु निलंबन कालावधीत माझे मुख्यालय कोणते याचा स्पष्ट उल्लेख केलेला नाही. मी निर्वाह भत्ता कोणाकडे मागणी करावयाचा हे समजून येत नसलेने मी निर्वाह भत्याची मागणी केली नव्हती. तरी पण मी दिनांक २३/५/२०१४ चे अर्जाने शाहूवाडी तहसील कार्यालयाकडे मागणी केलेली आहे॰ ते सुध्दा अद्याप मला मिळालेला नाही"

40. The Applicant thereafter had written to 'Respondent No.6 on 27.07.2015 which in fact shows him as residing at 'Kagal' in Tahsil Kagal, District-Kolhapur'. Such affirmative disclosure about not staying at 'Village Shalshi, Tahsil Shahuwadi, District Kolhapur' fixed as 'Headquarters' by 'Order' dated 4.03.2009 of Respondent No. 5 was thus made by Applicant for first time on 27.07.2015 since 'Suspension' on 04.03.2009 and commencement of 'Disciplinary Enquiry' on 20.11.2024.

41. The Applicant was served with 'Charge Sheet' dated 20.11.2014 for 'Departmental Enquiry' forwarded by Respondent No.5 to 'Tahsildar Kagal, District Kolhapur' on 20.11.2014 itself and thereupon 'Tahsildar Kagal, District Kolhapur' had get it served on Applicant on 24.11.2024. The 'Charge Sheet' dated 20.11.2014 contained 'Annexure 1 to 4' for conduct of 'Departmental Enquiry' by 'Enquiry Officer' who was appointed on 8.04.2015.

42. The Applicant had not contended that he was not served 'Final Notice' dated' 26.08.2015 by 'Enquiry Officer' but this is also not borne out by records; as reply was submitted by Applicant on 09.09.2015 to Respondent No.6 mentioning that he had already challenged institution of 'Departmental Enquiry'. The reply dated 09.09.2015 of Applicant establishes the fact about receipt of 'Final

Notice' dated 26.08.2015 issued by 'Enquiry Officer'. The record thus shows that Applicant was then not residing at 'Village Shalshi, Tahsil Shahuwadi, District Kolhapur' fixed as 'Head Quarters' during 'Suspension Period' from 4.03.2009 onwards but instead staying at '49 Jaisinghrao Park, Kagal, Tahshil Kagal, District Kolhapur'.

43. The Applicant can therefore be inferred to have not stayed at "Village Shalshi, Tahsil Shahuwadi, District Kolhapur' even for initial 11 Months which was fixed as 'Headquarter' by 'Order' dated 4.03.2009 of 'Respondent No.5'; as he never reported 'In Person' to 'Respondent No.7'. The Applicant had also not sought change in 'Head Quarters' from "Village Shalshi, Tahsil Shahuwadi, District Kolhapur' to '49 Jaisinghrao Park, Kagal, Tahshil Kagal, District Kolhapur' which was permissible as per 'GAD GR dated 19.03.2008. Hence, no right accrued to Applicant to receive 'Suspension Allowance', as he had not stayed at 'Head Quarters' fixed during 'Suspension Period' from 4.03.2009 onwards nor did he submit "No Employment Certificate" to 'Respondent No.7' for onward submission to 'Treasury Office' as provided under 'Rule 69(4)' of 'MCS (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981'. No such evidence about dates where he reported 'In Person' to 'Respondent No.7' or went to 'Treasury Office' has been brought on record by Applicant. The Applicant in his 'Affidavit-in-Rejoinder' dated acknowledges that he initially made application to seek 'Subsistence Allowance' on 12.08.2009 and then on 15.01.2010, but not thereafter and even admits to have claimed 'Subsistence Allowance' for first time on 10.07.2014.

44. The Applicant in his 'Affidavit-in-Rejoinder' dated 11.07.2018 even affirms that 'Respondent No.5' or 'Respondent No.7' never called upon him to furnish 'No Employment

Certificates' every month; as there was not even single communication from them regarding submission of 'No Employment Certificates'. However, records show that Applicant has in fact all along only submitted letters to 'Respondent No.7' claiming non-payment of 'Subsistence Allowance'; rather than complying with mandatory requirements of 'Rule 69(4)' of 'MCS (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981'.

45. The provisions of 'Rule 69(4)' of 'MCS (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981' are reproduced for contextual clarity :-

> "69. **Recovery of Government dues from subsistence allowances and furnishing of non-employment certificate while under suspension.**-
>
> > "(4) No payment under Rule 68(1) shall be made unless the Government servant furnishes a certificate to the following effect before payment is made every month :-
> >
> > > "I certify that I did not accept any private employment or engage myself in trade or business during the period in question."
> >
> > If the authority has any reasons to doubt this certificate; it may ask the Police Authorities to verify the certificate and if the Government servant is found to have given a false certificate, that should be construed as an act of misconduct and made an additional charge against him.
> >
> > In the case of Gazetted Officers under suspension, they should furnish the certificate themselves to the Treasury Officer/Audit Officer, who should see that the certificate is furnished before the claim for payment is admitted. In case of doubt regarding the certificate, the case should be referred to the Head of Department, who will ask the Police Authorities to verify the same."

The provisions of 'Rule 69(4)' of 'MCS (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981' do not provide any scope of first requesting for

payment of 'Subsistence Allowance' under 'Rule 68(1)' without complying with the necessary requirement of submission of 'Specific Certificate'. The sanctity of this Certificate to be furnished by delinquent 'Government Servants' is borne out by the fact that if necessary, it can be got verified by 'Police Authorities' and if thereafter they are found to be false, then it is construed to be an act of misconduct and made an 'Additional Charge' for 'Disciplinary Enquiry'.

46. We now rely on contents of 'Rules 8(3)', 'Rule 8(22)' and 'Rule 8(25)' of 'Rule 8' of 'Maharashtra Civil Services (D & A) Rules, 1979, which reads as under:-

> "**8. Procedure for imposing major penalties**.-
>
> (3) Where it is proposed to hold an inquiry against a Government Servant under this rule, the disciplinary authority shall draw up or cause to be drawn up-
>
> (i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;
> (ii) a statement of the imputation of misconduct or misbehaviour in support of each article of charge, which shall contain-
>
> (a) a statement of all relevant facts including any admission or confession made by the Government servant; and
>
> (b) a list of documents by which, and a list of witnesses by whom, the articles of charges are proposed to be sustained.
>
> (22) If the Government servant to whom a copy of the articles of charge has been delivered, does not submit a written statement of defence on or before the date specified for the purpose or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of this rule, the inquiring may hold the inquiry ex-parte**.**

(25) After conclusion of the inquiry, a report shall be prepared by the inquiring authority, such report shall contain-

(a) the articles of the charge and the statement of the imputations of misconduct or misbehaviour;

(b) the defence of the Government servant in respect of each article of charge;

(c) an assessment of the evidence in respect of each article of charge;

(d) the findings on each article of charge and the reasons therefor;

47. We then refer to specific meaning assigned to the word 'Evidence' in 'The Indian Evidence Act, 1872', 'The Law Lexicon' and 'Black's Law Dictionary' which are reproduced below :-

(a) **Evidence** : "Evidence" means and includes –

(1) all statements which the court permits or requires to be made before it by witnesses, in relation to matters of fact under enquiry,

such statements are called oral evidence;

(2) [all documents including electronic records produced for the inspection of the court],

such documents are called documentary evidence.

(b) **The Law Lexicon**: 'Evidence' is the means from which an inference may logically be drawn as to the existence of a fact. It consists of proof by testimony of witnesses, on oath; or by writings or records.

(c) **Black's Law Dictionary**: Any species of proof, or probative matter, legally presented at the trial of an issue, by the act of the parties and through the medium of witnesses, records, documents, exhibits, concrete objects, etc., for the purpose of inducing belief in the minds of the court or jury as to their contention.

The 'Evidence' can therefore be 'Oral', 'Documentary' and 'Circumstantial'. The preparation of documents and existence of documents is in itself a circumstance. Thus, what type of evidence is required to be recorded and believed so as to be able to arrive at

logical conclusion in 'Departmental Enquiry' depends on particular facts of that case. In the present case, submissions of made by learned Counsel for Applicant was that no 'Oral Evidence' came to be recorded against Applicant; as none of the '14 Witnesses' were examined by 'Enquiry Officer'. However, we are unable to appreciate this submission of learned Counsel for Applicant. On perusal of findings in 'Enquiry Report' and impugned 'Order' dated 05.02.2016 passed by 'Respondent No.4' as 'Disciplinary Authority'; we found that both of them record reasons. The 'Enquiry Officer' had specifically mentioned about documents referred to during conduct of 'Departmental Enquiry' which relate to how many false entries in 'Land Records' were allowed to be made by Applicant; while several 'Land Records' were found to have been changed with connivance of Applicant. In cases of 'Departmental Enquiry' such as that of Applicant when these 'Public Documents' speak volumes about themselves 'Oral Evidence' of '14 Witnesses' was not required to be recorded by 'Enquiry Officer' to separately prove their veracity so as to meet benchmark of preponderance of probability about serious misconduct of Applicant. The documents relied upon by 'Enquiry Officer' are 'Public Documents' as described under 'Section 74' of 'Indian Evidence Act, 1872'. Moreover, no strict proof of legal evidence is required in Departmental Enquiry. Hence, the Tribunal should restrain itself to discuss about it.

48. We are also aware that strict application of provisions 'Indian Evidence Act, 1872' is not required to establish veracity of 'Public Documents' which can be proved under its 'Section 78'. Thus, they could definitely be relied upon by 'Enquiry Officer' as they were either the 'Original Copy' or 'Certified Copy'. All relevant 'Land Records' were available with 'Enquiry Officer' and therefore

access to them was never denied to Applicant. Under such circumstances, case against Applicant falls in category based on irrefutable 'Documentary Evidence'. The 'Enquiry Officer' and 'Disciplinary Authority' thus were justified in coming to reasoned conclusion that even in absence of 'Examination of Witnesses' and recording of their 'Oral Evidence'; all '14 Articles of Charges' levelled against Applicant had been established by 'Enquiry Officer'.

49. The learned Counsel for Applicant had extensively relied on 'Judgment' of 'Hon'ble Supreme Court of India' regarding how non-payment of 'Subsistence Allowance' violates the 'Principles of Natural Justice' and vitiates conduct of 'Departmental Enquiry'. In the case of **JAGDAMA PRASAD SHUKLA (supra),** the 'Hon'ble Supreme Court of India' had observed as under:-

> *"8. The payment of subsistence allowance, in accordance with the Rules, to an employee under suspension is not a bounty. It is a right. An employee is entitled to be paid the subsistence allowance. No justifiable ground has been made out for non-payment of the subsistence allowance all through the period of suspension i.e. from suspension till removal. One of the reasons for not appearing in enquiry as intimated to the authorities was the financial crunch on account of non-payment of subsistence allowance and the other was the illness of the appellant. The appellant in reply to show cause notice stated that even if he was to appear in enquiry against medical advice, he was unable to appear for want of funds on account of non-payment of subsistence allowance. It is a clear case of breach of principles of natural justice on account of the denial of reasonable opportunity to the appellant to defend himself in the departmental enquiry. Thus, the departmental enquiry and the consequent order of removal from service are quashed."*

50. The learned Counsel for Applicant had also substantially relied on 'Judgment' of 'Hon'ble Supreme Court of India' regarding independence of 'Enquiry Officer' & necessity for 'Examination of Witness' besides furnishing of documents to delinquent 'Government Servants'. In case of ***SAROJ KUMAR SINHA*** (supra), the Hon'ble Supreme Court of India held as under:-

"28. An enquiry officer acting in a quasi judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department / disciplinary authority/Government. His function is to examine the evidence presented by the department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents……

30. When a department enquiry is conducted against the Government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The enquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service…….

42 In our opinion, the appellants have miserably failed to give any reasonable explanation as to why the documents have not been supplied to the respondent. The Division Bench of the High Court, therefore, very appropriately set aside the order of removal.

43. Taking into consideration the facts and circumstances of this case we have no hesitation in coming to the conclusion that the respondent had been denied a reasonable opportunity to defend himself the inquiry. We, therefore, have no reason to interfere with the judgment of the High Court."

51. The ***Hon'ble Supreme Court of India' in Indra Bhanu Gaur Vs. Committee, Management of M.M Degree & Ors, Appeal (Civil) Nos.8663-8664/2003, dated 7.11.2003*** subsequently had espoused more nuanced stance regarding non-payment of 'Subsistence Allowance' to delinquents 'Government Servants' to hold as under:-

"We find that there was total lack of cooperation from the appellant as the factual background highlighted above would go to show. Ample opportunity was granted to the appellant to place his case. He did not choose to do so. It is only a person who was ready and willing to avail of opportunity given can make a grievance about denial of any opportunity and not a person like the appellant who despite repeated opportunities given and indulgence shown exhibited defiance and total indifference in extending cooperation.

Therefore, on that score the appellant cannot have any grievance. So far as the effect of not paying the subsistence allowance is concerned, before the authorities no stand was taken that because of non-payment of subsistence allowance, he was not in a position to participate in the proceedings, or that any other prejudice in effectively defending the proceedings was caused to him. The appellant could not plead or substantiate also that the non-payment was either deliberate or to spite him and not due to his own fault. It is ultimately a question of prejudice. Unless prejudice is shown and established, mere non-payment of subsistence allowance cannot ipso facto be a ground to vitiate the proceedings in every case. It has to be specifically pleaded and established as to in what way the affected employee is handicapped because of non-receipt of subsistence allowance. Unless that is done, it cannot be held as absolute proposal in law that non-payment of subsistence allowance amounts to denial of opportunity and vitiates departmental proceedings."

52. The ***Hon'ble Supreme Court of India' in U.P State Textile Corporation Ltd Vs. P.C Chaturvedi & Ors, AIR 2006 S.C 87, dated 03.10.2005*** further based on differentiated facts and circumstances had lucidly explained about non-payment of 'Subsistence Allowance' by observing as under :-

"*It was pointed out by the appellant that in the order of suspension itself it was clearly noted that separate register would be maintained to mark his attendance in office but the respondent No. 1-employee did not sign the attendance register, which, would have otherwise shown whether he was attending office pursuant to the order of suspension. Therefore, the non- payment of subsistence allowance is of no consequence. Further, no prejudice has been shown as to how he was prejudicially affected by non- payment of subsistence allowance, particularly, when he did not comply with the requirements of the order of suspension about his signing the attendance register after attending office.*

So far as the effect of not paying the subsistence allowance is concerned, before the authorities no stand was taken by the respondent No. 1-employee that because of non-payment of subsistence allowance, he was not in a position to participate in the proceedings, or that any other prejudice in effectively defending the proceedings was caused to him. He did not plead or substantiate also that the non-payment was either deliberate or to spite him. It is ultimately a question of prejudice. Unless prejudice is shown and established, mere non-payment of subsistence allowance cannot ipso facto be a ground to vitiate the proceedings in every case. It has to be specifically pleaded and established as to in what way the affected employee is handicapped because of non-receipt of

subsistence allowance. Unless that is done, it cannot be held as an absolute position in law that non-payment of subsistence allowance amounts to denial of opportunity and vitiates departmental proceedings.

It is to be noted that no grievance was made at any time during the pendency of the proceedings that the respondent No. 1-employee was being prejudiced on account of non-payment of subsistence allowance. In fact, for the first time the request was made for payment of subsistence allowance on 5.1.1993 i.e. after completion of the enquiry. The ratio in Indrabhanu's case (supra) is clearly applicable to the facts of the present case."

53. The Hon'ble Supreme Court of India besides through catena of landmark 'Judgments' has clearly delineated the limited scope of 'Judicial Review' in matters of 'Departmental Enquiry' by recording incisive observations which are reproduced below:-

"A. The **Hon'ble Supreme Court in (1995) 6 SCC 749 (B.C. Chaturvedi v/s. Union of India and Others)** observed as under:-

"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules

prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H.C. Goel this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.

B. The **Hon'ble Supreme Court in (2011) 4 SCC 584 (State Bank of Bikaner and Jaipur v. Nemi Chand Nalwaya)** has held as below :-

> "7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence er where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations.

C. The **Hon'ble Supreme Court in (2008) 5 SCC 569 (Chairman & Managing Director, V.S.P. and Others v. Goparaju Sri Prabhakara Hari Babu)**, on the Doctrine of Proportionality has held that:

"21. Once it is found that all the procedural requirements have been complied with, the courts would not ordinarily interfere with the quantum of punishment imposed upon a delinquent employee. The superior courts only in some cases may invoke the doctrine of proportionality. If the decision of an employer is found to be within the legal parameters, the jurisdiction would ordinarily not be invoked when the misconduct stands proved."

D. The **Hon'ble Supreme Court in (2015) 2 SCC 610 (Union of India and Others v. P. Gunasekaran)** observed as under:-

> "13. Under Articles 226/227 of the Constitution of India, the High Court shall not:
>
> (i) reappreciate the evidence;
>
> (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
>
> (iii) go into the adequacy of the evidence;
>
> (iv) go into the reliability of the evidence;
>
> (v) interfere, if there be some legal evidence on which findings can be based.
>
> (vi) correct the error of fact however grave it may appear to be;
>
> (vii) go into the proportionality of punishment unless it shocks its conscience."

E. The **Hon'ble Supreme Court in (2022) 1 SCC 373 (Union of India and Others v. Ex. Constable Ram Karan)** has observed as follows:-

> "**23**. The well-ingrained principle of law is that it is the disciplinary authority, or the appellate authority in appeal, which is to decide the nature of punishment to be given to the delinquent employee. Keeping in view the seriousness of the misconduct committed by such an employee, it is not open for the courts to assume and usurp the function of the disciplinary authority.
>
> **24**. Even in cases where the punishment imposed by the disciplinary authority is found to be shocking to the conscience of the court, normally the disciplinary authority or the appellate authority should be directed to reconsider the question of imposition of penalty. The scope of judicial review on the quantum of punishment is available but with a limited scope. It is only when the penalty imposed appears to be shockingly disproportionate to the nature of

> misconduct that the courts would frown upon. Even in such a case, after setting aside the penalty order, it is to be left to the disciplinary/appellate authority to take a call and it is not for the court to substitute its decision by prescribing the quantum of punishment. However, it is only in rare and exceptional cases where the court might to shorten the litigation may think of substituting its own view as to the quantum of punishment in place of punishment awarded by the competent authority that too after assigning cogent reasons."

54. The OA No.96/2017 was finally heard on 02.09.2024 and thereupon listed for pronouncement of Judgment on 03.02.2025. However, as reliance has been placed on 'Judgments' of Hon'ble Supreme Court of India in ***Indrabhanu Gaur*** (surpa) and ***P.C. Chaturvedi*** (supra) regarding the issue of 'Subsistence Allowance', it was found desirable that the learned Advocate for Applicant is kept informed about it and thus pronouncement of this Judgment was deferred on 03.02.2025. The learned Advocate for Applicant produced few other 'Judgments' not in the compilation relied upon by her earlier which are regarding Non-service of Charge-sheet and Inordinate Delay in serving of Charge-sheet and role of Appellate Authority. The 'Judgments' relating to 'Subsistence Allowance' which were subsequently produced are (i) ***Uco Bank & Ors. Vs. Rajendra S. Shukla : 2018(14) SCC 92*** and (ii) ***Anwarun N. Khatoon Vs. State of Bihar & Ors. : 2002(6) SCC 703***. While the first precedes both ***Indrabhanu Gaur*** (surpa) and ***P.C. Chaturvedi*** (supra), the later stands clearly distinguished on account of elaborate reasons incorporated in this 'Judgment' based on the admitted fact that Applicant in this OA No.96/2017 never ever presented himself before Enquiry Officer or proceedings before Appellate Authority to earliestly plead grounds of 'Financial Hardships' becoming impediment to meaningful participation in the Departmental Enquiry.

55. The Applicant had displayed attitude of gross indifference not only during entire 'Suspension Period' from 4.03.2009 onwards but even during conduct of 'Departmental Enquiry' and at time of hearing before 'Appellate Authority'; as is borne out by the fact that Applicant was not present on single occasion to defend himself before both 'Enquiry Officer' or 'Appellate Authority'. The Applicant had showed complete apathy towards observing directions in 'Order' dated 4.03.2009 of 'Respondent No. 5' which required him to stay at 'Salshi, Tahsil Shahuwadi, District Kolhapur' fixed as 'Headquarter' and failed to submit 'No Employment Certificates' to either 'Respondent No.7' or directly to 'Treasury Office' to claim 'Subsistence Allowance'. Intriguing fact about case of Applicant is that though he choose to completely turn his back to proceedings in 'Departmental Enquiry' conducted expeditiously by 'Enquiry Officer' and during hearing of 'Appeal Memo' filed by 'Appellate Authority'; yet Applicant has attempted to justify these unexplained failings on his part with prayers that they be overlooked on grounds of 'Principles Of Natural Justice'.

56. The Applicant has even displayed temerity to place all infirmities relating to procedure under 'Rule 8' of 'Maharashtra Civil Services (D & A) Rules 1979 for conduct for 'Departmental Enquiry' only at doorsteps of 'Enquiry Officer' by conveniently absolving himself from all responsibilities placed upon him as delinquent 'Government Servants' after being placed under 'Suspension' on 04.03.2009. The Applicant by such demeanour has thus adopted stance much like an 'Ostrich Burying Its Head In Sand'.

57. The Applicant had conducted himself in rather curious manner as can be observed right from the time he chose to proceed

without any prior permission on long 'Medical Leave' from 16.10.2008 upto 4.03.2009 by just citing reasons of 'Lumbar Spondylisos' is considered to be common age related 'Degeneration of Vertebra'. The unusual demeanour of Applicant got further accentuated after passing of 'Order' dated 4.03.2009 by Respondent No.5 for his 'Suspension' which was carried through during conduct of 'Departmental Enquiry' which resulted in 'Order' dated 5.02.2016 of Respondent No.4 as 'Disciplinary Authority' for his 'Dismissal from Service'. The Applicant all along had shown marked attitude of nonchalance towards the grave consequences of being placed under 'Suspension' and then being subjected to 'Departmental Enquiry' which finally resulted in award of 'Major Penalty' for his 'Dismissal from Service'. Such instance of outright defiance of law and rules is not so commonly observed amongst multitudes of delinquent 'Government Servants'.

58. We rely completely on principles laid down by catena of above mentioned landmark 'Judgments' of 'Hon'ble Supreme Court of India' regarding limited scope of 'Judicial Review' in cases relating to decisions taken in respect of delinquent 'Government Servants' by 'Disciplinary Authority' and 'Appellate Authority. We further adopt the subtlety of well differentiated 'Judgments' of 'Hon'ble Supreme Court of India' which have explained with perspicuity specific circumstances when even non-payment of 'Subsistence Allowance' would not result in vitiating the outcome of 'Departmental Enquiry'. Hence, we arrive at well considered conclusion that 'Order' dated 5.06.2016 of Respondent No.4 as the 'Disciplinary Authority' for 'Dismissal of Service' of Applicant and 'Order' dated 22.11.2016 of Respondent No.3 as the 'Appellate

Authority' which confirmed 'Dismissal from Service' of Applicant do not merit any interference. Hence, the following Order.

O R D E R

(i) The Original Application No.1096/2017 stands Dismissed.

(ii) No Order as to Costs.

Sd/-
(Debashish Chakrabarty)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 03.02.2025
Dictation taken by :
S.K. Wamanse

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