MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

BENCH AT AURANGABAD

COMMON JUDGMENT IN O.A. NOS. 758 AND 842 OF 2012

(1) ORIGINAL APPLICATION NO. 758 OF 2012

DIST. : AURANGABAD

Shriniwas s/o Nagindas Tandale,
Age. 62 years, Occ. Nil
(Pensioner ï Retired as Addl. Dy.
Commissioner, S.I.D.)
R/o 3, Sankalp Apts.,
Deva Nagari, Shahanoorwadi,
Aurangabad. -- APPLICANT

V E R S U S

State of Maharashtra,
Through the Addl. Chief Secretary,
Home Department, M.S.,
Mantralaya, Mumbai ï 32. -- RESPONDENTS

W I T H

(2) ORIGINAL APPLICATION NO. 842 OF 2012

DIST. : AURANGABAD

Laxmikant S/O Parvati Tike,
Age. 61 years, Occu. Nil (Pensioner ï
Retired as S.P., State Human Rights
Commission, Mumbai),
R/o Flat no. 101, Miya Mohammad Chhotani
Cross Marg, Near Mahim Railway Station,
Oppo. Municipal School, Mahim (W),
Mumbai ï 16. -- APPLICANT

V E R S U S

State of Maharashtra,
Through the Addl. Chief Secretary,
Home Department, M.S.,
Mantralaya, Mumbai ï 32. -- RESPONDENTS

APPEARANCE : Shri Avinash Deshmukh, learned Advocate for the applicants in both the matters.

: Shri M.S. Mahajan, learned Chief Presenting Officer for respondents in both the matters.

CORAM : HON'BLE SHRI RAJIV AGARWAL, VICE CHAIRMAN
AND
HON'BLE SHRI J. D. KULKARNI, MEMBER (J)

J U D G M E N T

(Delivered on this 13th day of December, 2016)

1. As the set of facts are similar in both these O.As. hence, the same are being disposed of by this common judgment.

2. The applicant in O.A. no. 758/2012 Shri Shriniwas s/o Nagindas Tandale was appointed as a P.S.I. in 1974 and was promoted as a Police Inspector in 1991 and thereafter was promoted as a Dy. Superintendent of Police in 2005. He got retired on superannuation on 31.10.2008 and at that time he was working as a Additional Dy. Commissioner, S.I.D., Aurangabad.

3. The applicant in O.A. no. 842/2012 Shri Laxmikant Parvati Tike was appointed as a Police Sub Inspector on 16.3.1973. He was promoted as a Police Inspector in 1981, as a A.C.P. in the year 1992 and lastly he was promoted as a Dy. Superintendent of Police in the year 2003. He got retirement on superannuation on 31.8.2009.

4. A memorandum of charge was served on both the applicants on 12.10.2006 and the Departmental Enquiry (D.E.) was initiated against both of them. The said D.E., however, did not complete before the retirement of the applicants.

5. The applicant in O.A. no. 758/2012 Shri Shriniwas s/o Nagindas Tandale filed O.A. no. 920/2009 before this Bench of the Tribunal, since the D.E. was not completed against him. In the said O.A., this Tribunal was pleased to pass an order on 20.11.2009, whereby the respondents were directed to take final decision in the D.E. within one year from the date of that order and it was directed that the D.E. shall be completed on or before 19.11.2010.

6. The applicant in O.A. no. 842/2012 Shri Tike also filed O.A. no. 420/2010 before this Tribunal for directions to respondents to complete the D.E. The Tribunal vide order dated 17.1.2011 was pleased to direct the respondent to complete the D.E. within 3 months from the date of receipt of that order.

7. The learned C.P.O. thereafter filed M.A. bearing no. 388/2010 in O.A. no. 920/2009 for extension of time for completion of D.E. In the said M.A. this Tribunal was pleased to pass an order on 19.11.2010. In para no. 5 of the said order this Tribunal has observed as under :-

> ***"5. Before we can consider the request for time extension, it is desirable that, Additional Chief Secretary, Home Department should carry out an appropriate enquiry and find out the individuals responsible for the time lapse between 31.10.09 to 11.10.10 and inform the Tribunal, the name/s of the Officer responsible for this lapse. Only after such a report the request for time extension shall be considered on its merits."***

8. However, by the order dated 25.1.2011 passed in the M.A. no. 388/2010, this Tribunal extended the time for completion of D.E. till 19.5.2011 with a caution that the final order flowing from the D.E. must be served upon the applicant before extended time i. e. on or before 19.5.2011. However, the D.E. was not completed thereafter for a considerable time and lastly it was completed on 21.10.2011.

9. The respondent authority has passed following order in 21.10.2011 in the said D.E. :-

> *"आणि ज्याअर्थी, चौकशी अधिकारी यांनी काढलेले निष्कर्ष तसेच अपचारी श्री. एल.पी. टिके, तत्का. पोलीस अधिक्षक, श्री. एस.एन. तांदळे, तत्कालीन (वाचक) पोलीस उपअधिक्षक व श्री. एस.एम. खान, तत्का. अपर पोलीस अधिक्षक यांची निवेदने विचारात घेवून श्री. एल.पी. टिके, तत्का. पोलीस अधिक्षक, श्री. एस.एन. तांदळे, तत्कालीन (वाचक) पोलीस उपअधिक्षक यांच्या निवृत्तीवेतनातून १०टक्के रक्कम कायम स्वरुपी कपात करण्याचा व श्री. एस.एम. खान, तत्का. अपर पोलीस अधिक्षक, यांच्या निवृत्तीवेतनातून ५ टक्के रक्कम कायम स्वरुपी कपात करण्याचा निर्णय शासनाने घेतला आणि सदर निर्णय म.ना.से. (निवृत्तीवेतन) नियम १९८२ च्या नियम २७ मधील तरतुदी नुसार अपचारी श्री. एल.पी. टिके, तत्का. पोलीस अधिक्षक,*

श्री. एस.एन. तांदळे, तत्कालीन (वाचक) पोलीस उपअधिक्षक व श्री. एस.एम. खान, तत्का. अपर पोलीस अधिक्षक यांना दि. ११.८.२०११ च्या पत्रान्वये कळवून त्यावरील त्यांचे निवेदन मागविण्यात आले ;

आणि ज्याअर्थी, श्री. एल.पी. टिके, तत्का. पोलीस अधिक्षक यांनी दिनांक २४. ८.२०११ च्या पत्रान्वये आणि श्री. एस.एम. खान, तत्का. अपर पोलीस अधिक्षक, व श्री. एस.एन. तांदळे, तत्कालीन (वाचक) पोलीस उपअधिक्षक यांनी दि. १८.८.२०११ च्या पत्रान्वये प्रस्तावित शिक्षेबाबतचे त्यांचे निवेदन शासनास सादर केले ;

आणि ज्याअर्थी, चौकशी अधिकारी यांनी सादर केलेल्या अहवालाचे निष्कर्ष तसेच अपचारी श्री. एल.पी. टिके, तत्का. पोलीस अधिक्षक, श्री. एस.एन. तांदळे, तत्कालीन (वाचक) पोलीस उपअधिक्षक व श्री. एस.एम. खान, तत्का. अपर पोलीस अधिक्षक यांनी त्यांच्याविरुध्दच्या प्रस्तावित शिक्षेबाबत सादर केलेली निवेदने, या सर्व बाबी विचारात घेवून, अपचारी अधिका-यांविरुध्द प्रस्तावित केलेली शिक्षा कायम करण्याचा निर्णय शासनाने घेतला ;

आणि ज्याअर्थी शासनाच्या सदर प्रस्तावास महाराष्ट्र लोकसेवा आयोगाने त्यांच्या पत्र क्र. २०१०(६५२)/२६७/चार दि. २६.०९.२०११ अन्वये सहमती दिली ;

आता त्याअथी, श्री. एल.पी. टिके, तत्का. पोलीस अधिक्षक, गुन्हे अन्वेषण विभाग, औरंगाबाद, यांचेवर त्यांच्या निवृत्तीवेतनातून १० टक्के रक्कम कायम स्वरूपी कपात करण्यात यावी, श्री. एस.एन. तांदळे, तत्कालीन (वाचक) पोलीस उपअधिक्षक, गुन्हे अन्वेषण विभाग, औरंगाबाद, यांचेवर त्यांच्या निवृत्तीवेतनातूर १० टक्के रक्कम कायम स्वरूपी कपात यावी तसेच श्री. एस.एम. खान, तत्का. अपर पोलीस अधिक्षक, गुन्हे अन्वेषण विभाग, औरंगाबाद यांचेवर त्यांच्या निवृत्तीवेतनातून ५ टक्के रक्कम कायम स्वरूपी कपात यावी, अशी शिक्षा या आदेशान्वये बजावण्यात येत आहेत.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नांवाने."

10. The applicants preferred statutory appeal to the Government against the order of punishment in the D.E., however, the said appeal was not decided and, therefore, the applicants have filed the present respective O.As. as stated already.

11. Both the applicants prayed that the impugned order of punishment in the D.E. issued by the respondent dated 21.10.2011 be quashed and set aside and the respondents be directed to extend both the applicants all the consequential benefits to which they would be entitled in view of grant of prayer clause (A) i. e. quashing and setting aside the impugned order of punishment.

12. The respondent has filed affidavit in reply in O.A. no. 758/2012 on 6.4.2013. The said reply has been sworn in by Shri Navnath Wath, Desk Officer to the Govt. of Maharashtra in Home Department. It is material to note that in this reply affidavit the paragraphs of the O.A no. 758/2012 are not specifically replied i. e. either accepted or denied. The said reply seems to be in the form of a statement and there is absolutely no reply in real sense to the averments made in the said O.A.

13. In O.A. no. 842/2012 the reply affidavit is filed by said Shri Navnath Wath on 20.6.2013. In the reply affidavit, however, there seems to be para-wise comments to the said O.A.

14. Perusal of both the replies show that the respondent is trying to justify the action taken against both the delinquents. It is stated that memorandum of charges were issued quite earlier in time before the retirement of both the applicants on superannuation. The D.E. was entrusted to the Regional D.E. Officer, Aurangabad and full opportunity was given to the applicants to defend the enquiry. Due procedure was followed and since the applicants were found guilty, the punishment was imposed after giving due opportunity to the applicants.

15. It is the case of the applicants that the complaint against both the applicants was filed by one Shri Gayake and said Shri Gayake was taking keen interest in the D.E. and was also interfering in the D.E. He was allowed to participate, though was not having locus standi and the Enquiry Officer was under the influence of the complainant. The respondent submitted that Shri Gayake should have been joined as a necessary party. In short, the respondent authority is justifying the departmental action taken against the applicants.

16. We have heard Shri Avinash Deshmukh, learned Advocate for the applicants in both the matters and Shri M.S. Mahajan, learned Chief Presenting Officer for the respondents in both the matters. We have also perused the O.As., affidavit in replies in both the matters as well as various documents placed on record by the either sides.

17. The learned Advocate for the applicants submits that the D.E. is vitiated on various grounds. It is stated that, no opportunity was given to the applicants to defend the enquiry in true sense. The applicants were not provided with the copies of documents on which the Department was relying. The entire enquiry conducted is against the provisions of rule 8 of the M.C.S. (Discipline & Appeal) Rules, 1979. There is a breach of rule 8 (20) and rule 9 (3) of the M.C.S. (Discipline & Appeal) Rules, 1979. Even though the enquiry was initiated prior to retirement of the applicants, no specific order was passed for continuation of such enquiry after retirement of the applicants on superannuation. It is further submitted that, as per the provisions of rule 27 of the M.C.S. (Pension) Rules, 1982, no D.E. can be conducted unless the pensioner is found guilty of grave misconduct or negligence.

18. The learned Advocate for the applicants submits that even though the report of the enquiry consists of 105 pages, only 7 days time was given to the applicants to submit their reply to the said report. One Shri Gayake was the complainant on whose complaint the enquiry was initiated. Shri Gayake was very much interested in proceedings and he was illegally allowed to interfere in the enquiry proceedings. The Enquiry Officer was under influence of Shri Gayake. It is submitted that the enquiry was initiated in the year 2006 and it was concluded in the year 2011 and on that count only the proceedings of the D.E. are required to be quashed and set aside.

19. The learned Advocate for the applicants submits that the charges against the applicants were irrelevant and the applicants were not concerned with the alleged allegations made against them. The appreciation of the evidences done by the Enquiry Officer is perverse to the evidence on record. It is stated that the order in the enquiry awarding punishment upon the applicants passed in the year 2011 has been given effect from the year 2008 and hence, the D.E. is required to be quashed.

20. The learned C.P.O. tried to justify the D.E. It is stated that para-wise comments have been given in the O.A. no. 842/2012.

21. On going through the arguments advanced by the learned Advocate for the applicants and the learned C.P.O. for the respondents and on going through the various documents placed on record in both the matters, the only material point arises for our consideration is whether the impugned order of punishment dated 21.10.2011, whereby 10% amount from the monthly pension of each of the applicants have been deducted, is legal and proper ?

22. Admittedly the applicant in O.A. no. 758/2012 has got retirement on superannuation on 31.10.2007, whereas the applicant in O.A. no. 842/2012 got retirement on superannuation on 31.8.2009. Admittedly, memorandum of charge was served on both the applicants on 12.10.2006, but the D.E. could not be concluded before the retirement of

both the applicants and it was continued even after retirement and ultimately it has been concluded on 21.10.2011. It seems that the applicants were required to take many efforts to see that the D.E. is completed as early as possible. For that purpose the applicant in O.A. no. 758/2012 was required to file O.A. no. 920/2009 before this bench of the Tribunal and this Tribunal vide order dated 20.11.2009 was pleased to give some directions to the respondents therein. The relevant directions and observations of this Tribunal in O.A. no. 920/2009 in the order dated 20.11.2009 are as under :-

> ***"2. Learned P.O. has placed on record (Exh-"X") written instructions received by him from Desk Officer, Home Department of Government of Maharashtra. It appears that it has been resolved to pass the enquiry proceeding to the Enquiry Officer of regional level. It is assured that the enquiry will be concluded within one year. We take this assurance as undertaking of the respondents on record. They should conclude the departmental proceeding against the applicant up to the stage of serving final decision upon the applicant within a period of one year from today i.e. on or before 19-11-2010. Learned P.O. is directed to place a copy of this order before***

Additional Chief Secretary of Home Department for his information and appropriate action."

23. In spite the directions of this Tribunal the department did not complete the enquiry within the time frame and on the contrary requested for extension of time by filing M.A. no. 388/2010. This Tribunal passed order in M.A. no. 388/2010 on 19.11.2010 and the Additional Chief Secretary, Home Department was expected to carry out an appropriate enquiry and find out the individuals responsible for the time lapse between 31.10.09 to 11.10.10 and inform the Tribunal, the name/s of the Officer responsible for this lapse. Only after such a report the request for time extension shall be considered on its merits.

However, by the order dated 25.1.2011 passed in the M.A. no. 388/2010, this Tribunal extended the time for completion of D.E. till 19.5.2011 with a caution that the final order flowing from the D.E. must be served upon the applicant before extended time i. e. on or before 19.5.2011. However, the D.E. was not completed thereafter for a considerable time and lastly it was completed on 21.10.2011.

24. The applicant in O.A. no. 842/2012 also filed O.A. no. 420/2012 for the same cause and respondent was directed to complete enquiry within 4 months from the date of receipt of that order. Such order was passed on 17.1.2011.

25. Thus, it will be clear that the respondent has taken undue time for completing the D.E. and did not even complete the same in the time frame as specified by the Tribunal.

26. The learned Advocate for the applicants submits that the respondent has not passed any order regarding continuation of the D.E. after retirement of the applicants on superannuation. He relied on the case of **MADANLAL SHARMA VS. STATE OF MAHARASHTRA & ORS. {2004 (1) MH. L.J. 581}**, wherein the Hon'ble Bombay High Court has observed as under :-

> ***"In case of an enquiry which is initiated while the Government servant was in service, it is necessary that an order is passed intimating the delinquent that the enquiry proceedings shall be continued even after he had attained the age of superannuation, lest it shall be presumed that the enquiry came to an end and the delinquent was allowed to retire honourably. On reaching the age of superannuation, the retirement is automatic unless the competent authority passes an order otherwise."***

27. Admittedly in the present case, no specific order has been passed for continuation of the D.E. after retirement of the applicants on superannuation.

28. The learned Advocate for the applicants submits that in the D.E. principles of natural justice have not been followed and that the Enquiry Officer was under the influence of the complainant Shri Gayake.

29. The learned Advocate for the applicants invited our attention to the act of interference by Shri Gayake and the objections taken therefor by the applicants. It is found that Shri Gayake was trying to interfere in the enquiry and for that purpose he has also filed application to allow him to remain present in the enquiry. In fact, his application was rejected by the Enquiry Officer, but in spite of the same Shri Gayake was allowed to appear. The Enquiry Officer has observed in the report at paper book page 221 that there was nothing wrong in complainant remaining present from the legal point of view. The exact observations of the Enquiry Officer is as under :-

> *"अपचारी यांचे बचावाचे नमुद मुददया बाबत आमचे म्हणणे असे की, अर्जदार/फिर्यादी हे त्यांच्या न्यायिक दृष्टीकोनासाठी मा. न्यायालयात उपस्थित राहत होते. यात कोणतेही गैर नाही असे आमचे मत आहे."*

30. Vide application dated 21.1.2011 at paper book pages 523 and 524 the delinquents have taken objection for the presence of Shri Gayake. It is material to note that Shri Gayake is an Advocate. Similar applications were filed on 2.2.2011 and 7.3.2011. It is admitted that Shri Gayake was earlier not allowed to interfere in the enquiry, but all of a sudden, he was allowed to participate in the enquiry and not only that but he seems to

have participated and tried his level best to influence the Enquiry Officer. No reasons have been mentioned by the Enquiry Officer as to why earlier order rejecting participation of Shri Gayake in the enquiry was reviewed. The active participation of Shri Gayake shows that he was very much interested in the enquiry and possibility that the witnesses might be under his influence cannot be ruled out. Such undue participation of Shri Gayake can be said to be against principles of fair enquiry.

31. The learned Advocate for the applicants submits that the applicants have filed number of applications for getting the copies of the documents on which the department was relying. However, no such copies were supplied to the applicants. Vide application at paper book page 61 in O.A. no. 758/2012 the applicant Shri Shriniwas s/o Nagindas Tandale requested for the copies of the documents relied by the department. This application is comprehensive. Earlier application was filed on 27.3.2007 and the documents were sought. There is nothing on the record to show that, these documents were supplied to the applicants. Thus, the principles of natural justice have not been followed.

32. The learned Advocate for the applicants further submitted that the enquiry conducted against them is against the provisions of rule 8 of the M.C.S. (Discipline & Appeal) Rules, 1979. As per rule 8 (20) the Enquiring Authority may, after the Government servant closes his case and shall, if the Government servant has not examined himself, generally

question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him.

33. In the present case the applicants were not questioned to explain circumstances against them in the enquiry and, therefore, the applicants were not given any opportunity to explain the incriminating circumstances, alleged to have come in evidence against them.

34. The learned Advocate for the applicants has invited our attention to rule 8 (20) of the M.C.S. (Discipline & Appeal) Rules, 1979. The said rule says that :-

> ***"8. Procedure for imposing major penalties.***
>
> ***(20) The enquiring authority may, after the Government servant closes his case and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him."***

Perusal of the aforesaid rule shows that the enquiring authority has to question the delinquent on circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him. Analogues provision is also there in the Criminal Procedure Code. The intention

behind asking such question to the delinquent is to give him an opportunity to explain the incriminating circumstances brought in the evidence against him. In the present matters, since no such opportunity was given to the applicants, they could not explain as to why the witnesses were giving evidence against them and, therefore, this is nothing but denial of opportunity to the applicants and consequently amounts to denial of natural justice.

35. As per rule 9 (1) of the M.C.S. (Discipline & Appeal) Rules, 1979 the action is to be taken on the enquiry report. The said rule is as under :-

> ***"9. Action on the inquiry report. –(1) The discipline authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the enquiring authority for further inquiry and report, and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 8 of these rules as far as may be.***

36. In the present case the competent disciplinary authority only forwarded the enquiry report to the applicants and did not records his reasons either agreeing or disagreeing with the said report. The said fact is averred by the applicants in their respective O.As. and it is not specifically denied by the respondents. The forwarding letter is at paper

book page 134 i. e. Annex. J(1) in O.A. no. 758/2012. The enquiry report was simply forwarded to the applicants and they were directed to submit their written submission within 7 days. Thus, it is clear that the disciplinary authority neither mentioned that it agrees with the report or it disagrees with the report. The enquiry report is in 105 pages, however, only 7 days time was granted to the applicants to submit their say. This is nothing but denial of opportunity to the applicants and there is a breach of rule 9 of the M.C.S. (Discipline & Appeal) Rules, 1979.

37. The learned Advocate for the applicants submits that since the enquiry was not completed prior to retirement of the applicants and since there was no specific order for continuation of the enquiry after retirement of the applicants, the only enquiry which could have been continued at the most is under rule 27 of the M.C.S. (Pension) Rules, 1982. However, for conducting the enquiry under rule 27, it is necessary that the charges against the delinquents must be of a grave nature.

38. The learned Advocate for the applicants places reliance on the judgment in the case of **KESHAV GOPAL CHANDANSHIVE {2008 (4) MH. L.J. 741}**, wherein it has been clearly held that for inflicting any punishment on a pensioner, the misconduct committed by him is required to be proved to be of a grave nature.

39. The memorandum of charges against the applicant in O.A. no. 758/2012 Shri Shriniwas s/o Nagindas Tandale is at paper book pages 43 & 44 and the said charges are as under :-

"*बाब-१ गंगापूर पो. स्टे. गु.र.क्र. १४४/०२ (दि. १.१०.२००२ रोजी दाखल) या प्रकरणात (वाचक) पोलीस उपअधिक्षक श्री. एस.एन. तांदळे यांनी आरोपी कृष्णा पाटील व त्यांचे सहकारी सदस्य यांनी केलेल्या गुन्हयावर भर न देता निर्यात व्यापारी सियाराम गुप्ता यांच्या गुन्हयावरच भर दिला. पोलीस उप महानिरिक्षक, गुअवि, पुणे यांनी या प्रकरणी दिलेले आदेश झुगारुन चुकीचे दोषारोपपत्र तयार केले. त्रुटीच्या दोषारोपामुळे आरोपींना बेकायदा फायदा झाला.*

अशाप्रकारे श्री. एस.एन. तांदळे, (वाचक) पो.उप अधीक्षक, गुअवि, औरंगाबाद यांनी सचोटी व कर्तव्यपरायणता न ठेवता मनासे (वर्तणूक) नियम १९७९ मधील नियम क्र. ३ चा भंग केला आहे.

बाब -२गंगापूर पो.स्टे.गु.र. क्र. १७७/०२ (दि. १६.११.२००२ रोजी दाखल) या गुन्हयाचा तपास गुअवि, औरंगाबाद कार्यालयाकडे होता. आरोपीविरुध्द ४८ तासांच्या पोलीस कस्टडीबाबत दिनांक ३.११.२००४ रोजी निकाल झाला. त्यात न्यायालयाने काही सुचना दिलेल्या होत्या. श्री. एस.एन. तांदळे, (वाचक) पो.उप अधीक्षक, गुअवि, औरंगाबाद यांनी आरोपीच्या कस्टडीबाबत व तसेच त्यांना लॉकअपमध्ये ठेवण्याबाबत पुणे येथील वरिष्ठ अधिकारी वर्गाशी चर्चा न करता त्यांची दिशाभूल केली व आरोपींना कार्यालयातच आराम करू दिला.

अशाप्रकार सचोटी व कर्तव्यपरायणता न ठेवता म.ना.से (वर्तणूक) नियम, १९७९ मधील नियम क्र.३ चे उल्लंघन केले आहे.

बाब-३ गंगापूर पो.स्टे.गु.र. क्र. १५३/०३ (दि. ११.११.२००३ रोजी दाखल) मधील प्रकरणात आरोपीविरुध्द स्थानिक पोलीसांनी सबळ कारणे देऊन पोलीस कस्टडीची मागणी केली होती. तपास गुअवि कडे आल्यावर तेथील तपास अधिकारी श्री.एस.एम.खान, तत्कालीन अपर पोलीस अधिक्षक, गु.अ.वि. औरंगाबाद यांनी देखिल प्रथम दि. १०.६.२००४ रोजी त्याचप्रमाणे दिनांक १५.६.२००४ रोजी पुन्हा सबळ कारणे असलेले पत्र सरकारी वकीलांना दिले. परंतु, त्यानंतर दिनांक ३०.६.२००४ व दिनांक ६.७.२००४ रोजी सरकारी वकीलांना दिलेल्या पत्रात सदर कारणे नमूद न करता आरोपीच्या कस्टडीची सध्या गरज नाही, भविष्यात आवश्यकता असेल तर मागणार, त्यासाठी तपास अधिका-यांच्या अधिकाराचे संरक्षण करावे वगैरे आरोपीना फायदा होईल असे पत्र दिले. सदर पत्र (वाचक) पोलीस उप अधिक्षक श्री. तांदळे यांनी तयार केलेले असल्याने याबाबत श्री. तांदळे व कार्यालाचे नजिकचे वरिष्ठ म्हणून पोलीस अधीक्षक श्री. टिके यांची जबाबदारी आहे. न्यायालक्षात सुनावणीच्या वेळीही हे दोघेही हजर होते. गु.अ.वि. पुणे येथील वरिष्ठ अधिका-यांच्या परवनगीविना त्यांनी व तपास अधिकारी यांनी सदर पत्र सरकारी वकीलांकडे सादर केले.

अशाप्रकारे श्री.एस.एन.तांदळे, पोलीस उप अधिक्षक यांनी न्यायालयात प्रतिज्ञापत्र पाठवितांना पुणे येथील वरिष्ठ अधिका-याचे मार्गदर्शन न घेता सचोटी व कर्तव्यपरायगता न ठेवता मनासे (वर्तणूक) नियम, १९७९ मधील नियम क्र. ३ चा भंग केला आहे.

बाब-४:- उस्तानाबाद जिल्हा ढोकी पो. स्टे.गु.र. नं. १२०/२००२ (दिनांक १२.७.२००२ रोजी दाखल) हा गुन्हा गुअवि, औरंगाबाद कडे तपासावर होता. या गुन्हयामध्ये अपर पोलीस महासंचालक यांचा आदेश झुगारुन श्री. तांदळे यांनी आरोपी पदमसिंह पाटील व इतर संचालक मंडळ याच्याविरुध्द पुरावा नाही, असे प्रतिज्ञापत्राात नमूद केले.

अशाप्रकारे कसुरदार श्री. एस.एन.तांदळे, (वाचक) पोलीस उप अधीक्षक यांनी सचोटी, कर्तव्यपरायणता न ठेवता अपर पोलीस महासंचालक,

गुअवि, महाराष्ट्र राज्य, पुणे तसेच पोलीस उपमहानिरीक्षक, गुअवि, पुणे यांनी दिलेल्या आदेशाचा व महाराष्ट्र नागरी सेवा (वर्तणूक) नियम, १९७९ मधील नियम क्र. ३ चा भंग केला आहे."

40. The memorandum of charges against the applicant in O.A. no. 842/2012 Shri Laxmikant Parvati Tike is at paper book pages 35 & 36 and the said charges are as under :-

"बाब - १. गंगापूर पो.स्टे. गु.र.क्रं.१४४/०२, (दि. १.१०.२००२ रोजी दाखल) या प्रकरणात श्री. एल.पी.टिके, पोलीस अधिक्षक व त्यांचे (वाचक) पोलीस उप अधिक्षक श्री. एस.एन.तांदळे यांनी आरोपी कष्णा पाटील व त्यांचे सहकारी सदस्य यांनी केलेल्या गुन्हयावर भर न देता निर्यात व्यापारी सियाराम गुप्ता यांच्या गुन्हयावरच भर दिला. पोलीस उप महानिरीक्षक गुअवि, पुणे यांनी या प्रकरणी दिलेले आदेश झुगारून चुकीचे दोषारोपपत्र तयार केले. त्रृटीच्या दोषारोपामुळे आरोपींना बेकायदा फायदा झाला.

अशाप्रकारे श्री. एल.पी.टीके, पो. अधीक्षक गुअवि, औरंगाबाद यांनी सचोटी व कर्तव्य परायणता न ठेवता महाराष्ट्र नागरी सेवा (वर्तणूक) नियम, १९७९ मधील नियम क्रं. ३ चा भंग केला आहे.

बाब - २ - गंगापूर पो.स्टे. गु.र.क्रं.१७७/०२ (दि. १६.११.२००२ रोजी दाखल) या गुन्हयाचा तपास गुन्हा अन्वेषण विभाग, औरंगाबाद कार्यालयाकडे होता. या गुन्हयातील आरोपीच्या पोलीस कस्टडीसाठी तपासी अधिकारी यांनी न्यायालयात अर्ज सादर केले असता श्री. टिके यांनी त्यांना कस्टडीत घेउ नये व या प्रकरणात दोषारोप पाठविण्याइतपत पुरावा नसल्याचे सांगून तपासी अधिका-यांचा उत्साह कमी केला. आरोपीविरुध्द ४८ तासांच्या पोलीस कस्टडीबाबत दिनांक ३.११.२००४ रोजी निकाल झाला. त्यात न्यायालयाने

काही सूचना दिलेल्या होत्या. श्री. एल.पी. टीके, पोलीस अधिक्षक गुअवि, औरंगाबाद यांनी आरोपीच्या कस्टडीबाबत व तसेच त्यांना लॉकअपमध्ये ठेवण्याबाबत पुणे येथील वरिष्ठ अधिकारी वर्गाशी चर्चा न करता त्यांची दिशाभूल केली व आरोर्पीना कार्यालयातच आराम करू दिला. अशाप्रकारे सचोटी व कर्तव्यपरायणता न ठेवता त्यांनी महाराष्ट्र नागरी सेवा (वर्तणूक) नियम, १९७९ मधील नियम क्रं. ३ चे उल्लंघन केले आहे.

बाब - ३- गंगापूर पो.स्टे.गु.र.क्रं १५३/०३ (दि. ११.११.२००३ रोजी दाखल) मधील प्रकरणात आरोपीविरुध्द स्थानिक पोलीसांनी सबळ कारणे देउन पोलीस कस्टडीची मागणी केली होती. तपास गुअवि कडे असल्यावर तेथील तपास अधिकारी श्री. एस.एम. खान, तत्कालीन अपर पोलीस अधिक्षक, गुन्हे अन्वेषन विभाग, औरंगाबाद यांनी देखिल प्रथम दि. १०.६. २००४ रोजी त्याच प्रमाणे दिनांक १५.६.२००४ रोजी पुन्हा सबळ कारणे असलेले पत्र सरकारी वकीलांना दिले. परंतु, त्यानुसार दिनांक ३०.६.२००४ व दिनांक ६.७.२००४ रोजी सरकारी वकीलांना दिलेल्या पत्रात सदर कारणे नमूद न करता आरोपीच्या कस्टडीची सध्या गरज नाही, भविष्यास आवश्यकता असेल तर मागणार, त्यासाठी तपास अधिका-यांच्या अधिकाराचे संरक्षण करावे वगेरे आरोर्पीन फायदा होईल असे पत्र दिले. सदर पत्र (वाचक) पोलीस उप अधिक्षक, गुन्हे अ.वि., औरंगाबाद श्री. तांदळे यांनी तयार केलेले असल्याने कार्यालयाचे नजिकचे वरिष्ठ म्हणून पोलीस अधिक्षक श्री. टीके यांची त्यात जबाबदारी आहे. न्यायालयात सुनावणीच्या वेळीही हे दोघेही हजर होते. गु.अ.वि., पुणे येथील वरिष्ठ अधिका-याच्या परवानगीविना त्यांनी व तपास अधिकारी यांनी सदर पत्र सरकारी वकीलांकडे सादर केले आहे.

अशाप्रकारे श्री. एल.पी.टीके, पोलीस अधिक्षक यांनी न्यायालयात प्रतिज्ञापत्र पाठवितांना पुणे येथील वरिष्ठ अधिका-याचे मार्गदर्शन न घेता सचोटी व कर्तव्यपरायणता न ठेवता महाराष्ट्र नागरी सेवा (वर्तणुक) नियम, १९७९ मधील नियम क्रं. ३ चा भंग केला आहे.

बाब - ४ - उस्मानाबाद जिल्हा ढोकी पो.स्टे.गु.र.न.१२०/२००२ (दिनांक १२.७.२००२ रोजी दाखल) हा गुन्हा गुअवि, औरंगाबाद कडे तपासावर होता. या गुन्हयामध्ये अपर पोलीस महासंचालक यांचा आदेश झुगारून श्री. टीके यांना आरोपी पदमसिह पाटील व इतर संचालक मंडळ यांच्या विरुध्द पुरावा नाही, असे प्रतिज्ञापत्रात नमूद केले.

अशाप्रकारे कसुरदार श्री. एल.पी.टिके, पोलीस अधिक्षक यांनी सचोटी, कर्तव्यपरायणता न ठेवता अपर पोलीस महासंचालक, गु.अ.वि., महाराष्ट्र राज्य, पुणे तसेच पोलीस उप महानिरीक्षक, गुअवि, पुणे यांनी दिलेल्या आदेशाचा व (वर्तणुक) नियम, १९७९ मधील नियम क्रं. ३ चा भंग केला आहे"

41. According to the learned Advocate for the applicants, the applicant in O.A. no. 758/2012 Shri Shriniwas s/o Nagindas Tandale was working as a Reader in the office of the Superintendent of Police, Aurangabad and he was not at all concerned with the investigation in the crime. The respondent has not even properly filed affidavit in reply in the case. The Enquiry Officer, however, did not appreciate this fact with proper perspective. In fact, the Enquiry Officer ought to have come to the conclusion that the applicant was not at all concerned with facts alleged against him.

42. As seems from the memorandum of charges against both the applicants, the respondent alleged that both the applicants have not concentrated on the crime committed by the accused Shri Krishna Patil and others, but they have concentrated upon the allegations against the

businessman Shri Siyaram Gupta and thus they have prepared wrong charge sheet against the accused persons. There is nothing on record to show that, either of the applicants were directly responsible either for investigation or for preparing the charge sheet.

43. We have also perused the enquiry report from which it seems that the department has examined 4 witnesses viz. S/shri Omprakash D. Mane, Sadashiv Ambadas Gayake, Kishor G. Patil, Nandkumar M. Gandhile and out of these witnesses Shri Kishor G. Patil was Assistant Government Pleader in Hon'ble High Court.

44. Witness Shri Omprakash D. Mane was in fact Investigating Officer in crime nos. 144, 177 of 2002 of Gangapur Police Station u/s 406, 420 r/w 32 of I.P.C. and also in a crime no. 134/2003 & 152/2004 of the said Police Stations. He stated that Shri Laxmikant S/O Parvati Tike being S.P. and Shri Khan being additional S.P. should have guided him. He alleged that they were not satisfied as he and one Shri Anturkar, P.I. went to Delhi for investigation. It seems that this witness has made some allegations against the applicants for not cooperating him in the investigation. However, from his evidence it is clear that adverse CRs were written by the applicant Shri Tike against him and he has further stated that Shri Tike was having malice against him. From his cross examination it is clear that he never made any complaint against the

applicants to his superior and for the first time he was deposing against the applicant in the D.E.

45. The witness Shri Nandkumar M. Gandhile is the Director of Gangapur Sugar Factory and he seems to be interested to see that Shri Krishna Patil Dongaonkar, Chairman of the Gangapur Sugar Factory should have been punished. Shri Sadashiv A. Gayake is an Advocate and was also interested. Shri Gandhile could not state whether he has filed complaint against the Officers (applicants) for not properly dealing with the investigation of crime.

46. The witness Shri Sadashiv A. Gayake, as already stated earlier, has tried to interfere in the smooth conduction of the proceeding of the D.E. In his evidence itself he has admitted that Shri Tandale and one Shri Patil filed criminal complaint against him at Police Station as regards the misbehaviour and that he was discharged in the said complaint by the learned Sessions Court on 19.1.2010. This might be the reason as to why Shri Sadashiv A. Gayake was very much interested in interfering in the enquiry.

47. As seems from the memorandum of charges in the D.E. it is clear that the applicants have been charged for not submitting proper charge sheet in various crimes. However, from the record, it seems that, neither Shri Tandale nor Shri Tike were directly concerned with the conduction of investigation of the alleged crime. There is no evidence to show that

either of the applicants, in any manner, were concerned with the said investigation. The Respondent has not placed on record the duty list of both the applicants.

48. It is alleged that Shri Tandale has filed false affidavit in crime no. 120/2002, Police Station, Dhoke in Osmanabad District, but it is not filed by the applicants, but it is filed by one Shri Anturkar and, therefore, the applicants are not concerned with the said affidavit. There is nothing on the record to show that the applicants were directly concerned with the investigation of crime or that they have any reason to interfere in the investigation. The alleged charges against the applicants are not grave. As already discussed in the earlier paragraphs, for imposing punishment on the pensioner, the misconduct committed by him shall be proved to be of grave nature and, therefore, on this count also the D.E. against the applicants seems to be vitiated.

49. From the discussion in foregoing paragraphs, we are satisfied that the D.E. against both the applicants is vitiated as no specific order was obtained by the respondent for continuation of the D.E. even after retirement of the applicants. The respondent has not followed the principles of natural justice in conducting the D.E. and did not complete the enquiry within the time frame as specified by this Tribunal. No extension for the continuation of the D.E. even after such time frame was given by the Tribunal. The charges against the applicants cannot be said

to be grave so as to impose the punishment on the pensioner after retirement. The enquiry has been contemplated in the year 2005 and the same has been completed in the year 2011 and the applicants were harassed for almost 6 years on the allegations, which cannot be said to be grave. In such circumstances, we are of the opinion that the respondent now cannot be allowed to take action in the D.E. against the applicants. The orders of punishment imposed in the D.E. are, therefore, not legal and proper. We, therefore, pass following order :-

O R D E R

(i) O.A. nos. 758 & 842 of 2012 are allowed.

(ii) The impugned order of punishment dated 21.10.2011 (Annex. K) in O.A. no. 758/2012 and impugned punishment order dated 21.10.2011 (Annex. G) in O.A. no. 842/2012 are quashed and set aside.

(iii) The respondent is directed to extend all consequential benefits to which both the applicants will be entitled in view of quashing and setting aside the impugned orders of punishment dated 21.10.2011 in both the O.As.

There shall be no order as to costs.

MEMBER (J) **VICE CHAIRMAN**