

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No.418 of 2015 (D.B.)**

Vishnu S/o Surayabhan Gurao,
Aged about 48 years, Occup. nil,
R/o Laxmi Nagar, Infrant of D.Ed. Collage,
Kandli, Paratwada, District Amravati.

Applicant.

Versus

- 1) State of Maharashtra,
Through its Secretary,
Department of Revenue and Forest Mantralaya, Mumbai-32.
- 2) Chief Conservator of Forest and Regional Director,
Tiger project, Melghate, Amravati, Camp. Amravati.
- 3) Deputy Conservator of Forest Tiger project,
Melghate, Sipna wildlife Division,
Paratwada, District. Amravati.
- 4) Enquiry Officer,
Assistant Forester (Retd),
Under the authority of Deputy Conservator of Forest Tiger project,
Melghate, Sipna wildlife Division,
Paratwada, District. Amravati.

Respondents.

Shri P.S. Gawai, Advocate for the applicant.
Shri A.M. Khadatkhar, learned P.O. for respondents.

**Coram :-Hon'ble Shri Justice M.G. Giratkar,Vice Chairman and
Hon'ble Shri Nitin Gadre, Member (A).**

Date of Reserving for Judgment : 19th September, 2024.

Date of Pronouncement of Judgment : 7th October, 2024.

JUDGMENT**Per : Vice Chairman.****(Delivered on this 3rd day of October,2024)**

Heard Shri P. Ghare, learned counsel holding for Shri P.S. Gawai, learned counsel for applicant and Shri A.M. Khadatkhar, learned P.O. for respondents.

2. The case of the applicant in short is as under –

The applicant was initially appointed as a Forest Guard as per order dated 01/11/1994. He was transferred to Cipna Wildlife Division, Paratwada as a Forester on promotion. In the year 2011, Shri V.G. Wankhede was appointed as an Accountant in Ghugamal Wildlife Division, Paratwada. He was also incharge of Mahatma Gandhi Narega Irrigation Division. On 03/01/2011 due to defective work of Shri Wankhede, Shri Kiledar was appointed to take the charge of Shri Wankhede. Shri Wankhede was avoiding to hand over the charge to Shri Kiledar. Shri Kiledar made spot panchanama and it revealed that entries of Cheque nos.712780, 712781,712727,712783 and 712778 were not taken. Those cheques were found missing. On the basis of preliminary inquiry, the respondent no.3 had lodged report at Paratwada Police Station. Shri Wankhede and applicant were arrested by the Police. The Crime No.15/2012 was registered against the applicant and Shri Wankhede. Police has filed charge sheet before the Chief Judicial Magistrate, Amravati. The said criminal case is pending.

3. On 05/09/2012, the Inquiry Officer was appointed to conduct departmental inquiry. The Inquiry Officer submitted its report on 20/12/2012 holding that three charges levelled against the applicant, are proved. After the receipt of report of Inquiry Officer, the respondent no.3 has issued show cause notice on 03/01/2013. The applicant has submitted all his defence on 11/01/2013. Respondent no.3 not considered the statement of the applicant and dismissed the applicant from service as per order dated 30/06/2014. Being aggrieved by the said order, the applicant has preferred appeal before the appellate authority, i.e., respondent no.4. Respondent no.4 without going to the merit of the matter, mechanically dismissed the appeal on 16/04/2016. Hence, the applicant approached to the Tribunal for the following reliefs –

“7] a) quash and Set aside the order dated 16/2/2015, passed in appeal No. chemb-1/TPM/Admn/2304/14- 15 by respondent No.2 chief conservator of forest, and order Dt.30/6/2014 passed by Respondent No. 3, Deputy Conservator of Forest in Departmental Enquiry proceeding No. chemb-2/TPM/ Sipna/Admn/393/14-15 and further directed the respondent to join the service of respondent at his original post with continuity and back wages Annex.3 & 4.

8] In view of the facts and circumstances narrated hereinabove the applicant is praying for the interim relief to stay the effect and operation of dated 16/2/2015, passed in appeal No. chemb-1/TPM/Admn/2304/14-15 by respondent No.2 chief conservator of forest, and order Dt.30/06/2014 passed by Respondent No.3, Deputy Conservator of Forest in Departmental Enquiry proceeding No. chemb-2/TPM/ Sipna/Admn/393/14-15, and further directed the respondent to join the service of respondent at his original post with continuity and back wages during the pendency of present application.”

4. The O.A. is strongly opposed by the respondents. Para-10 of the reply is reproduced below –

“10. It is submitted that the Inquiry Officer appointed in the Departmental proceeding is the retired Assistant Conservator of Forest who is independent from the department. The Respondent No.3 has taken all necessary care of impartial Departmental Proceeding against the Applicant. The Inquiry Officer has given fair and equal opportunity to the Applicant to prove his innocence in Departmental inquiry. The Inquiry officer while considering the first charge levelled against the delinquent employee has considered the Cheque No.712777 of Rupees 525000/- in words five lakhs twenty five thousand rupees which has been en-cashed under the signature of V.S.Lokhande, fake name who is nonexistent. The initials V.S of the Applicant as well as the pattern of signature is as similar to the specimen of the Applicant which established the involvement of the Applicant in the said misappropriation. In the said Misappropriation all six Cheques were drawn by V.G.Wankhade and the Present Applicant with the common intention to defraud the Government Money. The Present Applicant in Government Uniform accompanied with V.G.Wankhade on all the occasion of withdrawn of the Mahatma Gandhi National Rural Employment Guarantee (MGNREG) and Vidharbha Pan Lot Scheme Money from the Bank. The Bank Manager, State Bank of India vide letter dated 10.03.2012 has revealed that the statements of the Bank employees are authenticated. The letter dated 10.03.2012 is annexed herewith as Annexure R-1 for ready reference. The Police Investigation in crime No.15/12 also reveals the same facts and the involvement of the Present Applicant in the said Misappropriation of Government Money. The Respondent No.3 has believed and considered the finding of the Inquiry Officer in respect of fair and efficacious opportunity be given to the Applicant to prove the innocence. Further the objection raised by the Applicant is not tenable it is submitted that there is a difference in Departmental Proceeding and the Police Investigation as per the ruling of apex court. In the case B. Balaiah Vs. D.T.O. Karnataka STC (1982 (3) SL, KAR, 675) the Disciplinary Authority, the court adjudicated that there is not legal bar to the Disciplinary Authority ordering a departmental enquiry even in a case, where a first information report U/s. 154 Cr.PC has been lodged. It is also submitted that the Respondents are well aware about the Departmental Proceeding and conducting the Departmental Proceeding in accordance with chapter 4 of Departmental inquiry manual as well as the

provisions of the Maharashtra Civil Services (A and D) rules 1979. So there is no fault on the part of Respondents to initiate the Departmental proceeding against the Applicant on existent facts of embezzled the Government money for his own use. So also there is difference between the Departmental Proceeding and the judicial proceeding. In Departmental Proceeding the allegations are proved on the basis of the statement of the witnesses and not on personal examination of witnesses like in Judicial Proceeding under the Criminal Procedure Code. The Respondent No.3 and 2 has given the fair opportunity in accordance with Natural Justice Principle to the Present Applicant therefore the respective order passed by both Respondent are correct and proper.”

5. After the preliminary inquiry, departmental inquiry was initiated. The Inquiry Officer submitted a report that the applicant is also involved along with Shri Wankhede for misappropriation of amount of Rs. 38.88 lacs. The charges are proved against the applicant. After receipt of report of Inquiry Officer, disciplinary authority i.e. respondent no.3 dismissed the applicant from service. In appeal, respondent no.4 has considered the contention of the applicant and come to conclusion that the punishment order is perfectly legal and correct therefore appeal also came to be dismissed. It is submitted that the decision taken by the respondents is proper and legal. Hence, the O.A. is liable to be dismissed.

6. During the course of submission, the learned counsel for applicant Shri Ghare has submitted that charges were not proved in accordance with law, there was no signature of the applicant. Hence, the punishment imposed by the respondents is not legal and correct. Shri Wankhede had encashed the said cheques of Rs. 38.88. The applicant not

concerned with the said amount. Hence, punishment imposed by the respondents is liable to be quashed and set aside.

7. The learned P.O. has submitted that the applicant was going to the Bank for encashment of the Cheques. The applicant has signed on the said Cheques. The signatures of the applicant and Shri Lokhande were compared by the Inquiry Officer. The Inquiry Officer has recorded its findings that charges are proved against the applicant.

8. The learned P.O. has submitted that this Tribunal cannot set aside the punishment by interfering with the findings of the facts recorded by the Disciplinary Authority and 1st Appellate Authority. In support of his submission pointed out judgment of the Hon'ble Supreme Court in the case of *State of Karnataka & Ano. Vs. N. Gangaraj (2020) 3 SCC 423*.

9. There is no dispute that the applicant was working with Shri Lokhande. As per the findings recorded by the Inquiry Officer, applicant was involved in the misappropriation of amount of Rs.38.88 lacs. The Inquiry Officer has verified the documents. As per his findings letters / akshar "V.S. Lokhande" are compared with handwriting of applicant and it was found that those signatures / letters were matched in the handwriting of the applicant. The Inquiry Officer also recorded its findings that the applicant was going to the Bank for encashment of cheques etc. Those Cheques were encashed by the applicant with Shri lokhande. The applicant and Shri Lokhande both have misappropriated the amount of Rs.38.88. The Inquiry Officer submitted his

detailed report to the Disciplinary Authority. The Disciplinary Authority after given the show cause notice, passed the order on 30/06/2014 and the applicant is dismissed from service.

10. The applicant filed appeal before respondent no.4. Respondent no.4 has recorded its findings as under –

“आरोपाबाबत शोध विवेचन व निर्णय:-

अपचारी श्री.व्ही.एस. गुरव (निलंबित वनरक्षक) यांचे बाबत अभिलेख पडताळणी केल्यावर आढळून आलेल्या ठळक बाबी खालीप्रमाणे आहे.

- 1) पोलिस तपासात श्री.व्ही.एस. गुरव, (निलंबित-वनरक्षक) यांचा सहभाग असल्याचे आढळून आले.
- 2) स्टेट बँकेच्या कर्मचा-यांनी दिलेल्या निवेदनात श्री.व्ही.एस. गुरव, (निलंबित-वनरक्षक) गणवेश घालून धनादेश वटविण्यासाठी येत असल्याचे म्हटले आहे.
- 3) स्टेट बँकेचे दिनांक 10.03.2013 चे पत्रानुसार श्री.व्ही. एस. गुरव, यांनी श्री व्ही. जी. वानखडे (बडतर्फ) लेखापाल यांचे सोबत धनादेश वटविल्याचे स्पष्ट नमुद आहे.
- 4) धनादेश क्रमांक 712777 रक्कम रु. 5,25,000/- वर श्री व्ही.एस. लोखंडे, नाव लिहून स्वाक्षरी करण्यात आली आहे. श्री. व्ही.एस. लोखंडे ही अक्षरे श्री गुरव यांचे हस्ताक्षर नमुन्याशी पडताळून पाहिले असता श्री व्ही.एस. लोखंडे वपअ ढाकणा ही अक्षरे तंतोतंत जुळून येतात.
- 5) चौकशी अधिकारी यांनी प्रकरणात सखोल चौकशी करून तसेच अपचा-यांस आवश्यक संधी देवून विस्तृत चौकशी अहवाल सादर केला व त्यांचे विरुद्ध तीनही दोषारोप सिध्द होतात असे स्पष्टपणे नमुद केले.
- 6) सादरकर्ता अधिकारी यांनी देखिल दोषारोप सिध्द होतात, असा स्पष्ट अभिप्राय दिला.
- 7) पोलिस स्टेशन अधिकारी, परतवाडा यांचे दिनांक 25.02.2012 व दि. 12.08.2012 रोजीच्या पत्रात अपचारी कर्मचा-यास सहभाग असल्याचे स्पष्ट होते.”

11. The Appellate Authority after recording detailed reasons, dismissed the appeal filed by the applicant.

12. It is clear that the Inquiry Officer has submitted report to the disciplinary authority recording its findings that charges are proved against the applicant. The disciplinary authority accepted the report and passed the dismissal order. The said order was upheld by the Appellate Authority i.e. respondent no.4. As per the judgment of the Hon'ble Supreme Court, this Tribunal cannot sit as an appellate forum and quash and set aside the reasoned order passed by the Disciplinary Authority and 1st Appellate Authority. The Hon'ble Supreme Court in the case of the of ***State of Karnataka & Ano. Vs. N. Gangaraj (cited supra)*** in para nos.8,9,10,13 and 15 held as under –

“8. We find that the interference in the order of punishment by the Tribunal as affirmed by the High Court suffers from patent error. The power of judicial review is confined to the decision-making process. The power of judicial review conferred on the constitutional court or on the Tribunal is not that of an appellate authority.

9. In State of A.P. v. S. Sree Rama Rao, a three-Judge Bench of this Court has held that the High Court is not a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant. It is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. The Court held as under: (AIR PP. 1726-27, para 7)

"7.... The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities

holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence."

10. In B.C. Chaturvedi v. Union of India, again a three-Judge Bench of this Court has held that power of 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 eyes of the court. The court/tribunal in its power of judicial review does not act as an appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. It was held as under: (SCC pp. 759-60. paras 12-13)

"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 the 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 co-extensive 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."

13. In another judgment reported as Union of India v. P. Gunasekaran this Court held that while reappreciating evidence the High Court cannot act as an appellate authority in the disciplinary proceedings. The Court held the parameters as to when the High Court shall not interfere in the disciplinary proceedings: (SCC p. 617, para 13)

"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.

15. The disciplinary authority agreed with the findings of the enquiry officer and had passed an order of punishment. An appeal before the State Government was also dismissed. Once the evidence has been accepted by the departmental authority, in exercise of power of judicial review, the Tribunal or the High Court could not interfere with the findings of facts recorded by reappreciating evidence as if the courts are the appellate authority. We may notice that the said judgment has not noticed the larger Bench judgments in S. Sree Rama Rao and B.C. Chaturvedi as mentioned above. Therefore, the orders passed by the Tribunal and the High Court suffer from patent illegality and thus cannot be sustained in law.”

13. In view of the decision of the Hon’ble Supreme Court, this Tribunal cannot quash and set aside the reasoned order passed by the Disciplinary Authority and 1st Appellate Authority i.e. respondent nos.3 and 4. It appears that the orders passed by respondent nos.3 and 4 are reasoned orders. The applicant along with one Shri Lokhande misappropriated the amount of Rs.38.88. Therefore, the punishment of dismissal is perfectly legal and correct. Hence, we proceed to pass the following order –

ORDER

The O.A. is dismissed with no order as to costs.

(NitinGadre)
Member(A).

(Justice M.G.Giratkar)
Vice Chairman.

Dated :- 07/10/2024.

dnk.

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

Name of P.A. : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman and
Member (A).

Judgment signed on : 07/10/2024.