

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 776 OF 2015

DISTRICT : MUMBAI

Shri Prakash Gangaram Sondkar,)
Working as Office Superintendent,)
In the office of Directorate of Medical)
Education & Research, Mumbai.)
R/o: B-2/405, Neelyog Apt,)
G.S Wadi No. 2, Pant Nagar,)
Ghatkopar [E], Mumbai 400 075.)...**Applicant**

Versus

The Director,)
Medical Education & Research, [M.S])
4th floor, Govt. Dental College &)
Hospital Building, St. Georges' Hospital)
Compound, P.D Mello Road, Fort,)
Mumbai 400 001.)...**Respondent**

Ms Swati Manchekar, learned advocate for the Applicant.
Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 29.08.2016

ORDER

1. Heard Ms Swati Manchekar, learned advocate for the Applicant and Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant challenging the order dated 4.9.2015 issued by the Respondent no. 1 for imposing punishment on him in a Departmental Enquiry which is done in violation of the principles of natural justice, according to the Applicant.

3. Learned Counsel for the Applicant argued that a Departmental Enquiry was started against the Applicant by order dated 4.6.2014. Earlier also a memorandum was issued to the Applicant for D.E on 21.12.2006. A Criminal Case, C.C no 650/801/2005 was also filed against the Applicant on the same charges and by order dated 31.1.2012, Learned Metropolitan Magistrate (15th Court), Mazgaon, Mumbai acquitted him for want of evidence against the Applicant. The Applicant was under suspension from 3.12.2004 to 22.8.2008 and this period was regularized as service period by the Respondent by order dated 31.8.2013. This order clearly

states that the suspension of the Applicant was unjustified. In the circumstances, the Respondent's decision to start a fresh D.E against the Applicant on the same charges in 2014 without taking any action on earlier enquiry ordered on 21.12.2006 is not in accordance with law. Learned Counsel for the Applicant argued that in the Criminal case, the amount allegedly misappropriated by the Applicant was stated to be Rs. 4,87,891/-. This charge was not proved. In the charge sheet in D.E, dated 21.12.2006 the amount of misappropriation was mentioned as Rs. 3,52,988/-. In the latest Enquiry also, this amount remained unchanged. The report of the Enquiry Officer dated 26.5.2015 shows that this charge was proved. Learned Counsel for the Applicant stated that copy of the report of Enquiry Officer dated 26.5.2015 was never served on the Applicant. The Respondent passed an order dated 3.8.2015 ordering recovery of Rs. 2,34,949/- from the Applicant and his pay was brought to the minimum of Time Scale for one year without cumulative effect. How this amount of Rs. 2,34,949/- was arrived at is not clear. Strangely, the Applicant was asked to give his representation on this 'order' within two days. Learned Counsel for the Applicant stated that the Applicant requested on 1.9.2015 to make available the copy of the charge sheet and report of the Enquiry Officer dated 26.5.2015 in the Departmental Enquiry. The copy of the Enquiry Report was given to the Applicant on 3.9.2015

and the order of punishment was issued on 4.9.2015. Learned Counsel for the Applicant argued that the Applicant was not given any opportunity to defend himself against the conclusions drawn by the Enquiry Officer and the impugned order dated 4.9.2015 was issued in complete violation of the principles of natural justice. Learned Counsel for the Applicant stated that Government has issued circular on 28.7.1992, making it mandatory to supply a copy of the Enquiry Report to the delinquent Government servant to enable him to make his submission, if any, before the disciplinary authority in regard to the findings of the reports. As the Applicant was not given such an opportunity the order dated 4.9.2015 is bad in law and is liable to be quashed and set aside.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondent that the Applicant was working as Cashier in J.J Hospital, Mumbai and it was found that the Applicant did not complete the cash book till 17.9.2004. There was difference of Rs. 5,72,697/- in the entries in the cash book which could not be reconciled. As the Applicant did not complete the cash book, which showed discrepancy of Rs. 5,72, 697/- a Criminal Case was registered against the Applicant. The amount of misappropriation in the criminal case charge sheet was mentioned as Rs. 4,87,891/-. The Applicant was acquitted by the Metropolitan Magistrate by order dated

31.1.2012. However, the issue of misappropriation of Rs. 3,52,988/- remained and therefore, a Departmental Enquiry (D.E) was held against the Applicant and he was given charge sheet on 4.6.2014. Learned Presenting Officer stated that the Respondent has given a copy of the final report of the enquiry to the Applicant. The D.E was held as per the prescribed procedure.

5. It is seen that initially the amount alleged to have been misappropriated by the Applicant was stated to be Rs. 5,72,697/-. This is mentioned in the report of the Dean, J.J Group of Hospitals, Mumbai dated 21.9.2004 to the Respondent (Exhibit R-2, page 130 of the Paper Book). However, in the FIR filed against the Applicant in 2004 (R-6 on page 140 of the Paper Book), the amount of misappropriation is stated to be Rs. 4,87,891/-. The same amount is mentioned in the order of the Metropolitan Magistrate, Mazgaon, Mumbai dated 31.3.2012, (Exhibit A-4, Page 37 of the Paper Book). The Applicant was acquitted of this charge for want of evidence. In the charge sheet dated 21.12.2006, in the Departmental Enquiry against the Applicant, amount of misappropriation is mentioned as Rs. 3,52,988/-. The D.E started by Memorandum dated 21.12.2006 was for some reasons, which are not clear, was never conducted. However, by another memorandum dated 4.6.2014, another D.E was started against the Applicant. Amount of misappropriation was kept at Rs. 3,52,988/-. In the

report of the Enquiry Officer dated 26.5.2015 (Page 74 to 89 of the Paper book), it is concluded that the amount of misappropriation was Rs. 3,52,988/- minus Rs. 1,62,957/-, i.e Rs. 2,34,949/-. This is stated in special comment “ विशेष टीप ” in the report. The amount comes to Rs. 1,90,031/-. However, the order dated 4.9.2015 mentions the amount of misappropriation as Rs. 2,34,949/-. From these discussion, it is not clear as to how the amount of misappropriation was calculated.

6. From the material on record, it is also clear that the charges against the Applicant in D.E were more or less identical with the charges in the Departmental Enquiry. The Respondent has also not explained as to why it became necessary to start a fresh D.E by memorandum dated 4.6.2014, while earlier a memorandum dated 21.12.2006 was issued to the Applicant which was never withdrawn. The Applicant has placed a copy of letter dated 1.9.2015 addressed to the Respondent at Exhibit A-18, (Page 72 of the Paper Book). This letter states that:-

“ तरी दोषारोपाबाबतचे कागदपत्राच्या तसेच विभागीय चौकशीचे अंतिम अहवालाच्या प्रति मला देण्यात यावे ही विनंती.”

In reply dated 3.9.2015, the Respondent has made available the copy of the Final Report. This is at Exhibit R-19 (page 73 of the Paper Book). These facts are

mentioned in para 6.27 and 6.28 of the Original Application. In the affidavit in reply dated 3.11.2015, the Respondent in para 30 and 31 has admitted that copy of the Enquiry Report was given to the Applicant on 3.9.2015. The Respondent has nowhere mentioned that copy of the Enquiry Report was given to the Applicant along with the Show Cause Notice cum order dated 3.8.2015 (Exhibit A-16, Page 68 of the Paper Book). This so called 'order' is a strange document. It states that order is issued to recover Rs. 2,34,949/- from the Applicant and for one year his pay was brought to the minimum of the Time Scale without cumulative effect. However, the last para of the order reads:-

“तरी वरील शिकेबाबत आपले काही म्हणणे असल्यास तसे अभिवेदन हे जापन मिळाल्यापासून २ दिवसांच्या आत सादर करावे. तथापि दिलेल्या मुदतीत आपले निवेदन प्राप्त झाले नाहीत तर सदर शिकेबाबत आपणास काहीही म्हणावयाचे नाही असे गूहीत धरून पुढील कार्यवाही करण्यात येईल.”

It is quite clear that this 'order' ated 3.8.2015 was issued without giving a copy of the Enquiry Report to the Applicant and without giving him any Show Cause Notice. In fact, this order itself can be said to be a Show Cause Notice, which was issued to him without making available a copy of the Enquiry Report to the Applicant. The Respondent in para 28 of his affidavit in reply has not denied the contention of the Applicant in para 6.25 of the Original Application that report of the Enquiry Officer

dated 26.5.2015 was not given to him before the 'order' dated 3.8.2015 was passed by the Respondent. Ultimately, the copy of Enquiry Report dated 26.5.2015 was given to the Applicant on 3.9.2015 and the impugned order of punishment was passed on 4.9.2015.

7. As per Rule 9(2) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979, it is mandatory to forward the copy of the report of the inquiry to Government servant, who can submit written explanation. This mandatory provision of Rule 9(2) was totally violated by the Respondent. Para 2 of the Government Circular dated 28.7.1992, is reproduced below:-

“ मोहम्मद रमझानखान विरुद्ध केंद्र शासन व इतर यांच्या दरम्यान झालेल्या दाव्यासंबंधी सर्वोच्च न्यायालयाच्या खंडपीठाने असा निर्णय दिला आहे की, ज्या ज्या प्रकरणांमध्ये चौकशी अधिकारी, चौकशीअंती, अपचारी हा एक किंवा सर्व दोषारोपांस्तव दोषी असल्याच्या निष्कर्षाप्रप्त येऊन शिक्षेच्या शिफारशीसह अथवा शिक्षेची शिफारस न करता आपला अहवाल शिस्तभंगविषयक प्राधिका-याकडे सादर करतो तेव्हा अशा प्रकरणांमध्ये या चौकशी अहवालाची प्रत अपचा-यास मिळण्याचा हक्क प्राप्त होतो व अपचा-याची इच्छा असल्यास, त्या अहवालांवर त्याची बाजू मांडण्याची/अभिवेदन करण्याचा हक्क त्यास प्राप्त होतो असा चौकशी अहवाल अपचा-यास न देणे म्हणजे नैसर्गिक न्यायाचे तत्व उल्लंघिल्यासारखे होईल.”

It is quite clear that the Respondent has imposed punishment dated 4.9.2015, in violation of the

principles of natural justice. Such an order cannot be sustained. The Applicant has retired on 30.9.2015 on superannuation.

8. The Applicant was acquitted in a criminal case on the same charge of misappropriation and the Respondent has not been able to even determine the amount of alleged misappropriation by the Applicant. In fact the amount of Rs. 2,34,949/- appears to be arrived at quite arbitrarily, The order dated 4.9.2015 is unsustainable. It is issued in violation of principles of natural justice and suffers from defects mentioned above. The order dated 4.9.2015 is quashed and set aside. Any recovery mentioned in the impugned order out of the amount from the Applicant may be refunded to him within 3 months from the date of this order. This Original Application is allowed accordingly with no order as to costs.

Sd/-
(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai
Date : 29.08.2016
Dictation taken by : A.K. Nair.