IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

ORIGINAL APPLICATION NO.611 OF 2015

DISTRICT : KOLHAPUR

Shri Abdul Aziz Gulamnabi Patel.)
Retired Assistant Conservator of Forest,)
Forest Department, Govt. of Maharashtra)
Mantralaya, Mumbai – 32 and residing at)
12, Green View Apartment, R.S.No.875,)
Ramanmala, Kolhapur - 416 003.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Addl. Chief Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai - 400 032.)

2. Maharashtra Public Service)
Commission, Through its Secretary,)
Having office at Bank of India Bldg,)
Fort, Mumbai.)...**Respondents**

Shri M.D. Lonkar, Advocate for Applicant.

Smt. K.S. Gaikwad, Presenting Officer for Respondents.

CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)
R.B. MALIK (MEMBER-JUDICIAL)

DATE : 28.06.2016

PER : R.B. MALIK (MEMBER-JUDICIAL)

JUDGMENT

1. This Original Application (OA) is brought by a retired Assistant Conservator of Forest who suffered an order of docking of his pension by 25% on account of an alleged misconduct vide the order passed by the disciplinary authority (The State of Maharashtra in Revenue and Forest Department) by the order of 5th August, 2011 and confirmed in appeal by the then Hon'ble Minister of Revenue on being assigned the said appeal by His Excellency the Governor of Maharashtra. Both these orders are the subject matter hereof.

2. We have perused the record and proceedings and heard Mr. M.D. Lonkar, the learned Advocate for the Applicant and Smt. K.S. Gaikwad, the learned Presenting Officer for the Respondents.

3. The date of birth of the Applicant is 1st April, 1942. He retired on superannuation on 31st March, 2000. He came to be appointed as Range Forest Officer way back in 1965. It is his case that while working as Sub-Divisional Forest Officer at Osmanabad, he incurred the

wrath of some political leaders who filed complaints against him. The complaints broadly under four heads came to be enquired into and the Applicant in the manner of speaking was exonerated. In fact, in that particular report of Conservator of Forest, Aurangabad Circle, there were observations to suggest that the complainants were satisfied that there was no guilt attributable to the Applicant. Further, the performance of the Applicant was excellent within the limits of the site quality and biltic factors (Page 35 of the paper book). The Applicant came to be transferred from Osmanabad to Amaravati in April, 1997. No sooner did that happen than the calamity befell him as far as his career was concerned. He came to be suspended in contemplation of a departmental enquiry (DE) by an order of 19th January, 1998. He challenged that order before the Nagpur Bench of this Tribunal. On 5.2.1999, he was reinstated. The Nagpur OA was disposed of.

4. On 16th January, 1999, the DE got underway. A charge-memo was served on him enlisting two charges. The first charge was that while working as Deputy Conservator of Forest at Osmanabad during 24th September, 1993 to 24th April, 1997, the Applicant allegedly effected purchases of articles (जडसंग्रह) and

perishable (नाशिवंत) beyond the limit fixed by the grants and thereby Government money was wasted (अपव्यय). Quite pertinently, there was no charge either explicit or implicit, express or implied suggesting any wrong doing with regard to the Rest House and defalcation or misappropriation, etc.

5. The 2nd Charge was that he did not act with due dispatch on the receipt of first information No.3/95-96 (Book No.C-1/95-96, dated 21.6.1995) from a Forester and was guilty of inexcusable delay and negligence (अक्षम्य दिरंगाई व निष्काळजीपणा). Here again, there were no allegations either expressly or impliedly, explicitly or implicitly or in any manner capable of being inferred of misappropriation or any such serious looking allegation. The fact that such grave allegations were not there at all in the two heads of charges is very significant as we shall be pointing it out while adjudging the accuracy or otherwise of the enquiry report and both the impugned orders when studied in juxtaposition with one another. But this we must emphasize is a significant aspect of the matter.

6. Equally significant is the fact that not only were the witnesses not examined during the enquiry but they were not even cited. That would quite clearly indicate that the accuser did not want the charges to be proved by oral

evidence at all. In that sense, the charge was sought to be proved by way of documents and may be the circumstances emanating therefrom.

7. Enquiry came to be entrusted to the Special Regional Enquiry Officer by the order of the disciplinary authority dated 16.1.1999. That enquiry was ordered under Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 although the year is wrongly mentioned as 1971 in Exh. 'A' being the order of the disciplinary authority. In the meanwhile, as already noted above, the Applicant superannuated on 31st March, 2000, but the enquiry had not even commenced in right earnest much less was it concluded. Therefore, the stage was set for the provisions of Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982 (Pension Rules) to operate. However, neither in any express order nor in any document was there any recital capable of being so construed as to mean that the charges were so grave as to let the enquiry go on even post retirement. The Applicant was in constant correspondence from time to time with the Respondents agitating his case. It will not be necessary for us to set out the contents of those letters, etc. It may only be mentioned without any fear of contradiction that the speed with which the enquiry progressed would even do proud to

the proverbial snail. To say that there was delay will be true but a gross understatement. Quite pertinently, no justification has also been offered much less established as to why such a long delay which in fact in the context amounts to latches causing prejudice to the sufferer should have occurred.

8. At Exh. 'J' (Pages 189 to 220 of the paper book) there is a report of the Enquiry Officer dated 9.3.2006. The conclusions were based on no oral evidence and they were supposedly based only on documents. The first charge was held partly proved and the second charge was held not proved. The Applicant participated in the enquiry and sought additional documents. Now, regardless of the fact that the disposition reflected by the report of the Enquiry Officer was not entirely unfriendly to the Applicant, the fact still remains that even while stating the first charge, the facts with regard to a Rest House at Yedshi and the purchase of seeds and pesticides came to be incorporated. At this stage itself, it may be usefully noted that by the time, the matter travelled from the Enquiry Officer to the first impugned order by the disciplinary authority and the second one by the appellate authority, there was expansion on the Rest House aspect of the matter and in fact, by the time, it was before the

disciplinary authority and appellate authority graver allegations of misappropriation, etc. which as highlighted above were not the charges were not only levelled against the Applicant but taking into account the general tenor of the two impugned orders, they were the basis for the adverse orders being made against the Applicant. This quite clearly totally vitiates the enquiry and in fact, makes it completely untenable. To the extent necessary, we shall elaborate on this aspect of the matter presently with the guidance from the case law. But for the present, we may return to the report of the Enquiry Officer. After a somewhat lengthy discussion on Page 209, the Enquiry Officer concluded that in so far as the first head of the charge was concerned, the Presenting Officer made a detailed statement but they were not specific and it was not even clear as to what the accusation was and unless that was so, it would be improper to expect that the Applicant would be in a position to reply thereto satisfactorily. On Page 209 of the paper book, there is a reference in the Enquiry Report to there being no charge about the rate contracts, tricon tenol and aggrofos, etc. Having alluded to these aspects of the matter, he concluded that the charges were not proved beyond doubt or dispute, but yet by a 1.25 line, the conclusion was that

the accusation was only partly proved. In fact, nothing incriminating was proved.

9. In so far as the second charge was concerned, its discussion is to be found on Pages 209 to 220 of the paper book. On Page 211, there are observations to the effect that the duties and responsibilities therein alluded to were of Forester (वनक्षेत्रपाल). Due notice was taken of the case of the Applicant that in the enquiry, it was earlier held (Exh. 'C' to this OA), the complainant Journalist was called for getting satisfied about his grievance. It needs only to be recalled that all the charges in that particular enquiry were held not proved against the Applicant. Ultimately, in so far as the second charge was concerned, it was concluded that the seized property was under the control of the Forester and it was his responsibility to keep it secured even on technical aspect of the matter. The charge against the Applicant was therefore not proved.

10. This enquiry report was submitted to the disciplinary authority. It would appear that the said authority was not at all satisfied therewith, and therefore, he issued a notice calling upon the Applicant to show cause as to why 25% of his pension should not be docked. Now, reading this show cause notice, it was *inter-alia*

mentioned therein that the Enquiry Officer had held the first charge as partly proved and the second charge as not proved, but the Government did not agree with that particular finding and had drawn its own conclusion *inter-alia* taking into account the response of the Applicant. Thereafter, the allegations were repeated without reasoning out the disagreement with the Enquiry Officer. Now, it is no doubt true that whenever a disciplinary authority decides to appoint an Enquiry Officer, the said Enquiry Officer is but an extended arm of the disciplinary authority. The said authority can accept the report in toto, can partly accept it and can even reject it in toto. However, it is not a question of unbridled discretion now, regard being had to legal position such as it obtains as a result of the law laid down by the Hon'ble Supreme Court in the matter of **Yoginath D. Bagde V/s. State of Maharashtra & Anr. (1999) Supreme Court Cases (L & S) 1385 (D)**. Their Lordships were pleased to hold that in the event such a disagreement was there between the report of the Enquiry Officer and that of the disciplinary authority, it was incumbent to issue a show cause notice to the delinquent with regard to the justification therefor. Even if such may not have been the express requirements in the Rules, but they must be still read therein by virtue of the salutary principles of natural justice. **Yoginath Bagde's**

case also arose out of M.C.S (D & A) Rules, 1979 and the Petitioner therein was governed thereby.

11. Quite pertinently, Rule 9(2) of the M.C.S (D & A) Rules, 1979 came to be substituted and a new Sub-rule 2(a) came to be incorporated in the said Rules w.e.f. 10.6.2010. It is very clear that the mandate of the Hon'ble Supreme Court in **Yoginath Bagde's** case has now been incorporated in the Rules quite clearly and unambiguously. The same needs to be reproduced for ready reference.

> "9(2): The disciplinary authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the inquiring authority, a copy f the report of the inquiring authority together with its own tentative reasons for disagreement, if any, with the findings of inquiring authority on any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority within fifteen days, irrespective of

whether the report is favourable or not the said Government servant.

(2-A) The disciplinary authority shall consider the representation, if any, submitted by the Government servant and record its findings before proceeding further in the matter as specified in sub-rules (3) and (4)."

12. Examining the said show cause notice on the anvil of **Yoginath Bagde** and the above referred Rules, it is absolutely clear that the mandate thereof was faithfully complied with in its complete breach. That would knock the stuffing out of the case of the Respondents because that infirmity was not only not noticed by the disciplinary authority and the appellate authority, but they proceeded on the assumption that everything was legally accurate which quite clearly was an inaccurate way of thinking. We may now proceed to the order of the disciplinary authority.

13. Before we did that at this stage, it will be proper to first of all delineate the cantours of our own jurisdiction in dealing with the matters such as this one. Here, we exercise the jurisdiction of judicial review of administrative action. This is not an appellate jurisdiction. The scope of the scrutiny is basically limited to make sure inter-alia

that the authorities below acted within their own jurisdiction and well within the principles of natural justice. Fair-play and justice is the watch world and the Tribunal shall make sure that these principles were followed by the authorities below. The scope as we mentioned above would be narrower and restricted when compared with the appellate jurisdiction. The rigors of the procedural law applicable to the criminal trial and in fact, even to the trial of civil suit are not applicable in the field of administrative law. The degree of proof is of preponderance of probability and not proof beyond reasonable doubt. The Tribunal does not interfere or even intervene just on the basis of the possibility of there being another point of view on the same set of facts. The crucial aspect is as to whether on the facts such as they were, the conclusions were just and proper. If this assurance can be had from the record, then the Tribunal would not intervene or even interfere. Same principle will apply when the procedure adopted by the authorities in the conduct of the DE falls for scrutiny. The process must be just reasonable and in accordance with the principles of natural justice. All opportunities must be made available to the delinquent to defend himself both by the opportunity to cross-examine the witnesses of the Establishment and for adducing his

own evidence in rebuttal. The procedure must not be oppressive and legally suffocating.

14. It is, however, equally true that with all the constraints that apply to the jurisdiction such as this one, the fact remains that the Tribunal still cannot shut its eyes to something that stares in the judicial face. The Tribunal shall not fetter itself by artificial shackles and ignore even those infirmities that provide for scope and occasion to surely interfere in the interest of justice.

15. At this stage itself, we may note that the same principle holds good for the punishment aspect of the matter. The Tribunal shall not readily tread on the area reserved for the administration in the matter of punishment. If on the proved facts, the punishment does not appear oppressive or disproportionate to the proved delinquency, then the Tribunal would refrain from interfering. However, it must follow that if on the other hand, the punishment appears to be disproportionate to the proved delinquency and is in fact shockingly disproportionate, then there would be no judicial impediment for the Tribunal to intervene or interfere. The perusal of the Paragraph culled out in Placitum 'F' in

Yoginath Bagde's case (supra) would make it clear that the above referred principles are to be borne in mind.

16. Mr. Lonkar, the learned Advocate for the Applicant relied upon **Kuldeep Singh Vs. Commissioner of Police and ors., 199 SCC (L & S) 429 and B.C. Chaturvedi Vs. Union of India & ors. (1995) 6 SCC 749**.

17. Now, returning to the facts of this OA, we find that the approach of all the three authorities viz. the Enquiry Officer, the disciplinary authority and the appellate authority was far from being straightforward. It was not just erroneous in which event perhaps someone could have argued to salvage the same. For example, by the very nature of things, the charges were such as could be proved not just by documents because by no stretch of imagination could it be said that the documents were beyond the pale of dispute. In fact, the record such as it is, does not even give an inkling of what those documents were. If the two top authorities allowed themselves to be swayed out of the ambit of the charge and make it more onerous without the corresponding safeguard for the Applicant, then it goes without saying that, much more care ought to have been taken to ensure that the Applicant was sufficiently forewarned and given an opportunity to

defend himself. There are categories and categories of cases. It may not be possible to lay down as an intractable principle of law that in all matters, oral evidence is an absolute imperative. However, if a case is document based and reliance is placed on the circumstances emanating therefrom, then they should be capable of being not just be received in evidence, but also acted upon. If the nature of the accusation is such that without oral evidence, no reasonable process of evaluation of evidence could arrive at a conclusion apparently arrived at by the authorities below, then the conclusions would not just be fallible but would be downright perverse and to work on the principle that even such a perverse finding could pass muster with the scrutiny of the Tribunal would ultimately amount to saying that the Tribunal itself has abdicated its judicial responsibility and that it would never do. We would, therefore, unhesitatingly hold that the case of the Respondents right from the word go was extremely shaky and untenable when they merrily proceeded without oral evidence.

18. Now, both in the order of the disciplinary authority as well as appellate authority, there is absolutely no indication of why **Yoginath Bagde's** mandate as well as the new Rule 9(2) and 2-A of the M.C.S (D & A) Rules were

not complied with. **Yoginath Bagde's** case is a complete guide for such matters. In the first place, amongst the three orders, perhaps the report of the Enquiry Officer was the best amongst the worst, although it also suffered from the vices hereinabove discussed. However, the orders of the disciplinary authority and the appellate authorities in fact leave everything to be desired. The discussion and the conclusion are absolutely vague and give a clear indication of a committed mindset. It is, therefore, very clear that on a proper assessment of these orders, they quite simply cannot be upheld.

19. We have already alluded to the issue of delay. We must repeat that there is no indication at all as and by way of justification for the delay. The fact that the authorities did not care to make sure that this was a grave case so as to continue post retirement has also been discussed. However, the delay aspect of the matter has clearly made the entire process as totally oppressive regardless of whether the Applicant was retired or whatever. This aspect of the matter must be seriously considered when it is before the quasi-judicial Tribunal because as a matter of fact, this is for the first time that the judicial treatment is to be given to the essentially administration action. Our attention was invited by Shri

Lonkar to a common order in **OA 830/2003 and 831/2003 (Pradeep C. Hakay and anr. Vs. Govt. of Maharashtra, dated 8.12.2003)**. In Para 6 thereof, the Bench of the then Hon'ble Chairman noticed the significance of delay while judging the validity of action such as this one.

20. Our attention was also invited by Mr. Lonkar to **Prem Nath Bali Vs. Registrar, High Court of Delhi and ors, AIR 2016 SC 101**. Paras 31 and 32 in fact need to be reproduced from that judgment.

> "31. Time and again, this Court has emphasized that it is the duty of the emplo0yer to ensure that the departmental inquiry initiated against the delinquent employee is concluded within the shortest possible time by taking priority measures. In cases where the delinquent is placed under suspension during the pendency of such inquiry then it becomes all the more imperative for the employer to ensure that the inquiry is concluded in the shortest possible time to avoid any inconvenience, loss and prejudice to the rights of the delinquent employee.

32. As a matter of experience, we often notice that after completion of the inquiry, the issue involved therein does not come to an end because if the findings of the inquiry proceedings have gone against the delinquent employee, he invariably pursues the issue in Court to ventilate his grievance, which again consumes time for its final conclusion."

21. For the same proposition, our attention was invited to **Arjun Chaubey Vs. Union of India and others, 1984 SCC (L & S) 290**. We are of the opinion that this is one matter where the delay *per-se* is fatal to the administrative action and it was not necessary to establish prejudice. However, assuming it was necessary to be so done, the prejudice is writ large *ex-facie* the record. If the DE had been completed with the kind of dispatch that it ought to have been, it goes without saying that the evening of the life of the Applicant would at least have been comparatively assured regardless of whether it would have been peaceful or not. He would have known his fate early. Quite strikingly and we must repeat that there is absolutely nothing by way of explanation as to why this much delay ought to have been caused. We must also emphasize that the completely baseless nature of the case

against the Applicant compounds the tragedy for the Applicant but as a fall out more so for the Respondents. Because we presume that the Respondents want to continue to be called model employers. Whether they have done it or not is something that does not derogate against the truism of the principle itself.

22. We have already discussed the principles with regard to the punishment being proportionate to the proved delinquency. Now, the above discussion must have made it clear that as far as this OA is concerned, the whole thing becomes academic because there could have been no punishment at all because the delinquency was not proved. We may only mention that for the proposition of law, Mr. Lonkar referred us to **D.V. Kapoor Vs. Union of India and others, 1990 SCC (L & S) 696.**

23. Having discussed all the fact components and having already indicated that there was no charge at all for the Applicant having caused loss to the Government, needless to say that even that loss has not been quantified at all to a satisfactory extent. But, even if there was some whisper here and there, that was not the charge and it was not such as to become provable only by documents.

24. The upshot is that the Original Application will have to be accepted. There was no justification at all for the docking of the pension to the extent of 25%. Not only will the full pension have to be restored to the Applicant, but whatever has been deducted will also have to be refunded to him and it will have to be made clear that failure to comply would result in the liability to pay interest. This is one matter where we are so inclined as to impose cost as well.

25. In view of the foregoing, the action of the Respondents and the impugned orders made by them are quashed and set aside. The Applicant is exonerated from the DE and the punishment awarded to him is also quashed and set aside. The Respondents shall restore to the Applicant his full pension forthwith and refund arrears of the amounts deducted as a result of the impugned order. The full pension becomes payable forthwith and then continues regularly every month and the arrears shall be paid within a period of four weeks from today, failing which the said amount of arrears shall carry the interest at the rate of Rs.12% p.a. from the date of deduction till actual payment. The Original Application is allowed in these terms with cost of Rs.5,000/- (Rs. Five Thousand Only) to be deposited in the Office of this Tribunal within

four weeks and the same be paid over to the Applicant thereafter on a proper identification.

Sd/-

(R.B. Malik)
Member-J
28.06.2016

Sd/-

(Rajiv Agarwal)
Vice-Chairman
28.06.2016

Mumbai
Date : 28.06.2016
Dictation taken by :
S.K. Wamanse.
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