IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

ORIGINAL APPLICATION NO.692 OF 2015

DISTRICT : PUNE

Shri Kantilal Damodar Shaha.)
Retd. Regional Dairy Development Officer)
Dairy Development Department and)
Residing at Flat No.1, Fountainhead)
Apartment, Opp. Sangam Press, Kothrud,)
District : Pune – 411 038.)...**Applicant**

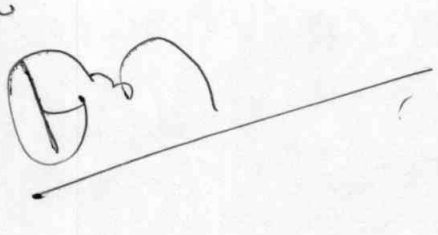
Versus

1. The State of Maharashtra.)
Through the Secretary,)
Agriculture, Animal Husbandry,)
Dairy Development & Fisheries Dept,)
Mantralaya, Mumbai - 400 032.)

2. Maharashtra Public Service)
Commission, Through its Secretary,)
Having its office at Bank of India)
Building, Dr. D.N. Road, 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 : 29.08.2016

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

JUDGMENT

1. The Applicant who was Regional Dairy Development Officer having retired way back on 30th June, 2003 was visited with a punishment ultimately of withholding of his pension to the extent of 5% for one year. He is aggrieved thereby and is up before us by way of this Original Application (OA).

2. The Applicant held Indian Dairy Diploma and took up the assignment as Assistant Agriculture Officer on 7th August, 1967. Just a few months before his retirement on superannuation, he was served with a charge-sheet dated 27th January, 2003. It was a three pronged charge-sheet. It was alleged inter-alia that while working here in Mumbai as Regional Dairy Development Officer during 2.3.1996 and 18.6.1999, he was also given additional charge of Dairy Engineer from 1.7.1996 to 24.7.1996, 18.9.1997 to 13.11.1997, 13.12.1997 to 28.12.1998, 28.12.1998 to 8.1.1999, 21.3.1999 to 15.5.1999, 1.6.1999 to 18.6.1999. During this period of additional charge, the

dairy project at Kankavali was to be set up. Purchases were required to be made for the said purpose. It was incumbent on him to make the purchases in accordance with the directives then in force. However, he committed breach of that condition and made the purchases as per his own will and also committed breach of the terms and conditions of the tender. He thereby improperly helped the suppliers. The 2nd charge was that during the said period of additional charge, he made payments in an improper manner when the spare-parts had not even been supplied and rendered help to the suppliers. His conduct was unbecoming of a public servant. The 3rd charge was that he made the purchases through the suppliers of the material which was not in accordance with the approved ones.

3. Ultimately, the Regional Special Officer of departmental enquiries came to be appointed as an Enquiry Officer by the disciplinary authority. Before we proceed further be it noted that the 1st Respondent hereto is the State of Maharashtra through the Department of Agriculture, Animal Husbandry, Dairy Development and Fisheries while the 2nd Respondent is the Maharashtra Public Service Commission (MPSC).

4. At this stage itself, it would not be out of place to note down the date-wise progress even if it could be called that way, of the departmental enquiry (DE). The charge-sheet was issued on 27th January, 2003. The formal order of DE was made on 7.5.2003. The Enquiry Officer after examining two witnesses submitted his report on 17th June, 2004. The Applicant submitted his explanation on 30th July, 2004. One order of the proposed punishment came to be issued on 3rd March, 2005 for which the explanation was submitted on 15th April, 2005. The revised punishment order was made on 3rd August, 2006 for which two explanations were given by the Applicant on 14th September, 2006 and 23rd July, 2007. Final order of punishment by the disciplinary authority was made on 28th July, 2010. The appeal was preferred to His Excellency the Governor of Maharashtra on 7th March, 2011 and final order thereon was made on 27th August, 2014. The appeal was marked to the then Hon'ble Minister of Agriculture whose order dated 27th August, 2014 was communicated on 25th February, 2015. Initially, the proposed punishment was deduction of 10% of the pension for two years and recovery of an amount of Rs.84,800/- from the gratuity amount payable to the Applicant. However, ultimately, it is common ground and also borne out by the documents that the recovery aspect of the punishment was

fully deleted and the pension was docked by 5% for one year. Both the orders are being impugned herein.

5. 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.

6. Before we proceed further, a few points need to be made. In the first place, the enquiry having spilled over post retirement, the governing provision would be Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982 (Pension Rules). It is clear that now the provisions of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 would not be applicable and the punishment that could be meted out was affecting the pension and recovery of amount to the extent of which the loss was allegedly caused by the retired employee. We must make it very clear that although on the face of it, the punishment appears to be quite minor but then, in the first place in a Rule governed system of public administration, the delinquency has to be established and then the issue of punishment arises. It cannot be a reverse trend. It cannot be argued that just because the punishment is seemingly minor, the delinquency must be upheld. That would be

travesty of justice. Secondly, the minor nature of the punishment as rightly pointed out by and on behalf of the Applicant is *ipso-facto* a reason why the Tribunal will have to make sure that the alleged misconduct was grave in nature. In support of this proposition, our attention was invited by Shri Lonkar, the learned Advocate for the Applicant to the Judgment of the Hon'ble Supreme Court in the matter of **D.V. Kapoor Vs. Union of India, 1990 SCC (L & S) 696**. We are quite conscious of the legal position as fairly stated by Mr. Lonkar that if the word, "grave misconduct" is specifically not used, that by itself would be no ground to hold against the State. But here, it needs to be noted that on the perusal of the record, it must appear to the Tribunal that the charges leveled against the delinquent were of grave nature and it is in this context that the minor nature of punishment would serve as guidance that it was after all not a case of grave misconduct.

7. Further, the normal principles that are applicable to such matters where the judicial forum scrutinizes the orders made below as a forum of judicial review of administrative action, there is a peculiarity of the expanse of jurisdiction. We had an occasion to deal with this aspect of the matter in several OAs and in one where

the order is pronounced today itself, we had an occasion to deal with this aspect of the matter and it will be advantageous to note our observations from a part of Paras 11 and 12 of **OA 1098/2015 (Mr. Rajendra W. Dhakad Vs. The State of Maharashtra and 2 Ors.)**.

> "**11.** We may now turn to the departmental enquiry aspect of the matter. It would appear from Page 35 of the P.B. (Exb. 'B') that the Regional Enquiry Officer Shri Chinchnikar was appointed as an Enquiry Officer (EO). Before we proceed to read to the extent necessary and permissible, the departmental enquiry proceedings, it will be appropriate to delineate to ourselves the scope of our own jurisdiction in dealing with the matters like the present one. Our jurisdiction is of a judicial forum that functions as a forum of judicial review of administrative action. It is not an appellate forum, and therefore, the latitude is that much narrower. The process and purity and accuracy of the process of reaching the conclusion rather than the conclusions themselves is the chief concern in such jurisdictions. That process must be informed by the principles of natural

justice, *audi alteram partem.* The strict Rules of Evidence such as enshrined in the Codes of Procedure and Indian Evidence Act with their rigors are inapplicable to the departmental proceedings, but still a delinquent must receive a treatment in accordance with the principles of natural justice and fair-play. In actual practice, he must be given an opportunity to defend himself both by way of testing by cross examination the witnesses against him and also leading positive evidence, if he was so inclined to do. The burden of proof in such matters on the employer is not like it is on the prosecution in a criminal trial of proof beyond reasonable doubt, but it is of preponderance of probability. The mere fact that the judicial personnel presiding over the judicial forum would have or have not reached the same conclusion as did the authorities would not be by itself sufficient for the judicial forum to act.

12. The judicial forum would make sure that there was some incriminating material to act in the manner that they did and if that incriminating material warranted the conclusions

drawn by them to be drawn, then that would be something which would be accepted by the judicial forum and that precisely is the distinction between an appellate forum and the forum that exercises the jurisdiction of judicial review of administrative action. These principles apply in the matter of not only the determination of guilt, but also the imposition of penalty. In case of proved delinquency, the punishment will not be disproportionately harsher which might mock at the principles of natural justice and fair-play. This is the broad parameter which we must act within."

8. Now, turning to the report of the Enquiry Officer and the DE itself, remaining within the jurisdictional confines set out hereinabove, the enquiry itself went on for quite a long period of time although only two witnesses were examined. They were cross-examined also to his heart's content by the Applicant, and therefore, no grievance could be made in that behalf. What quite clearly appeared from the report of the Enquiry Officer based on the statements recorded by him and this is even if we take the statements as it is, that whatever purchases were made, may not have been physically received by the

Applicant. The charge itself indicates that he was holding additional charge of the said post. In the Enquiry Report, the machine-wise details have been given and although the report is sufficiently lengthy, but in our opinion, even if we were to view the same within the confines of our jurisdiction, it would appear that there was an element of the Enquiry Officer being in the manner of speaking committed. He did make reference to the defence taken by the Applicant and in upholding all the three charges, he rushed to the conclusion of guilt without meeting with the points raised by the Applicant. It is no doubt true that such an Enquiry Officer can on the basis of the record such as, is before him, arrive at his own conclusion and the Tribunal will not just for the asking rush into substituting its own views for the views of the Enquiry Officer which may or may not be ultimately accepted by the disciplinary authority. However, with all the jurisdictional limitations, if it is found that the major points of defense have not been met with adequately at all, then such a report would be severely susceptible to judicial intervention or even interference and that we are afraid is something that the Enquiry Report in this matter is susceptible to. There is a detailed narration of the piece of evidence, but as we mentioned, there is no adequate reason for rejecting the defence of the Applicant.

9. What is most important is that while the alleged loss caused to the Government was at the back of the mind of the Enquiry Officer and that was somewhat understandable also, but a very significant fact that in an arbitration proceeding, the entire loss had been recovered by the State from the supplier was completely lost sight of by the Enquiry Officer and also by the disciplinary and appellate authorities. In actual fact, therefore, there was no loss caused at all to the State and that in fact has been tangentially mentioned even in the appellate order. What is not there is a proper appreciation of that aspect of the matter. Further, merely by accepting the machinery of some other description, it could not be said that there was a kind of intention which furnishes to the conduct of the Applicant, a colour of delinquency. There is absolutely no explanation to the fact as to why the machinery could not have been returned back to the supplier, if there was any defect therein. In fact, there is not even a remote suggestion of the material being inferior quality, etc. The only allegation was that it did not answer to the one earlier approved. Now, we are not hearing a matter of criminal nature and we are not governed strictly by the principles of criminal law. However, even in matters where the degree of proof is of preponderance of probability, there has to be an element of some guilty intention though its degree may

not be as high as in a criminal trial. *Mens-rea* to that extent has to be established to succeed in actions like the present one as well, although we must repeat times out of number that its degree would not be that high as it is in a criminal trial.

10. Therefore, we are quite clearly of the view that on the basis of the record such as it is, it can safely be concluded without straining any natural or judicial nerve that the three pronged charge against the Applicant was really not proved. The Enquiry Officer as already mentioned above, did not address himself to the core of the defence raised by the Applicant and the same lapse continued in the order of the disciplinary authority as well as appellate authority. We, therefore, conclude by holding that this matter is not immune from the quasi-judicial interference and the Applicant is entitled to be fully exonerated.

11. The order of the disciplinary authority as well as the appellate authority confirming it are both quashed and set aside. The Applicant is exonerated of the charge framed against him. The order imposing punishment as mentioned above is consequently quashed and set aside. The amount, if any, withheld be refunded to the Applicant

within four weeks from today, if no other enquiry is pending against him and the Respondents shall move as if no punishment was ever meted out to the Applicant. The Original Application is accordingly allowed in these terms with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
29.08.2016

Sd/-

(Rajiv Agarwal)
Vice-Chairman
29.08.2016

Mumbai
Date : 29.08.2016
Dictation taken by :
S.K. Wamanse.
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