

THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO. 981 OF 2017
(SUBJECT : D.E.)

Vishnupant Umaji Sherkhane)
Aged 74 yrs, Occu: Retired as Education Officer,)
R/at 49/13 Bhavani Peth, Hanuman Nagar Ring)
Road Solapur – 413002.

....Applicant

Versus

1. The State of Maharashtra,)
Through Principal Secretary,)
Department School Education,)
Mantralaya, Mumbai 32)
2. The Commissioner of Education,)
Maharashtra State, Central Bldg)
Pune – 411 001.)
3. The Director of Education, Secondary &)
Higher Secondary Education Central Bldg.,)
Pune District Pune – 411 001.)
4. The Regional Deputy Director of)
Education, Latur Region, Latur.)
5. The Education Officer (Continuing)
Education), Central Building, Osmanabad.)

...Respondents.

Shri R.G. Panchal with Shri A.R. Kori, learned Advocate for the Applicant.
Ms. N.G. Gohad, learned Presenting Officer for the Respondents.

CORAM : SHRI JUSTICE A.H. JOSHI, CHAIRMAN
SHRI P.N. DIXIT, MEMBER(A)
RESERVED ON : 23 .01.2019.
PRONOUNCED ON : 25 .01.2019.
PER : SHRI P.N. DIXIT, MEMBER(A)

J U D G M E N T

- 1) Heard Shri R.G. Panchal with Shri A.R. Kori, Learned Advocate for the Applicant and
Ms. N.G. Gohad Learned Presenting officer for the Respondents.



2) Brief facts of the case:-

- (a) The Applicant was transferred to District Raigad in the month of March, 1988 in the post of Education Officer (Primary). The Applicant remained absent from 8.3.1988 to 12.06.1989. Enquiry was initiated against him towards said absence.
- (b) Another enquiry was initiated against the applicant on the charge that he had remained absent on duty from 4.11.91 to 22.06.93.
- (c) Applicant retired on 31.05.2001 on superannuation.
- (d) As the applicant did not submit his explanation in the departmental enquiry, Show Cause Notice was issued on 28.11.2001 calling to show cause as to why punishment of deduction of 50% of pension should not be imposed.
- (e) After taking into account, explanation given by the applicant submitted on 18.02.2002, the order of punishment dated 04.02.2003 was issued on 17.05.2004.
- (f) The applicant preferred appeal before the Hon'ble Governor of Maharashtra against the order dated 04.02.2003. Applicant was directed to remain present for hearing on 09.03.2011 and 11.05.2011. Applicant remained present and submitted his written submission on 11.05.2011. Applicant received letters dated 17.12.2011 and 01.06.2013 (Annexure 'D', Page 166 & 167 of the O.A.) The order mentioned as under:

“मा. राज्यपाल महोदयांकडे सादर केलेल्या अपिलावर मा. राज्यपालांच्यावतीने मा. मुख्यमंत्री महोदयांच्या निर्देशानुसार मा. मंत्री (क्रीडा व युवक कल्याण) यांनी अपिलीय अधिकारी म्हणून सुनावणी घेतली. अपिलीय प्राधिका-यांनी श्री. शेरखाने यांच्या विभागीय चौकशी प्रकरणाची छाननी करून श्री. शेरखाने यांच्या दि. ४.२.२००३ अन्वये बजावण्यात आलेल्या शिक्षेमध्ये बदल करण्यात येऊ नये असे स्पष्ट मत दिले. त्या अनुषंगाने श्री. शेरखाने यांचा दि. ४.२.२००३ च्या शिक्षा आदेशाविरुद्ध केलेला अपील अर्ज फोटाळण्याचा निर्णय शासनाने घेतला आहे.

त्याअर्थी आता महाराष्ट्राचे राज्यपाल म्हणून महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम १९७९ च्या नियम ६ अन्वये प्रदान करण्यात आलेल्या शक्तीचा वापर करून श्री. शेरखाने यांचा दि. ४.२.२००३ च्या शिक्षा आदेशाविरुद्ध केलेला अपील अर्ज फोटाळण्यात येत आहे.”

(Quoted from page 166 & 167 of paper book of the O.A.)

8/40.

3) The Applicant has challenged this impugned order on various grounds including following.

(i) The enquiry proceedings were continued even after his retirement without intimation. It is vitiated in view of the judgement in **Madanlal Sharma vs State of Maharashtra, 2004 (1) MLJ 581**; and **Chairman/Secretary of the Institute of Shri Acharya Ratna Deshbhushan Shikshan Prasarak Mandal, Kolhapur and another vs Bhujgonda B. Patil : 2003 (3) MLJ 602**, both decided by Hon'ble High Court and **Prabhakar Tukaram Sonkamble vs State of Maharashtra : OA 328 of 2016**, decided by this Tribunal on 20.03.2017.

(ii) The action on the part of respondents withholding 50% pension of applicant is *prima facie* illegal, in view of the fact that misconduct alleged against applicant was only unauthorized absence and nothing grave; (**Krushnakant B. Parmar vs Union of India & Anr, (2012) 3 SCC 178 (Page 10 & 11 of paper book)**).

(iii) According to the applicant "*The said order dated 17.12.2011 is cryptic and unreasoned. The order is clearly passed without application of mind as evident from the absence of reasons in support thereof.*"

(Quoted from page 7 "4.14" of paper book of the O.A.)

4) The applicant has, prayed as under:-

"8. (a) This Hon'ble Tribunal be pleased to quash and set aside the impugned order dated order dated 4.2.2003 (actually served on 5.4.2004) and appellate order dated 17.12.2011 (actually served on 1.6.2013),"

(Quoted from page 13 of paper book of the O.A.)

5) The Respondent No. 1 in their Affidavit has refuted the contentions made by the applicant and the relevant portion of the same is as under:-

"2. An appeal was made by the applicant to Hon'ble Governor on 23.04.2010, after a prolonged period of 7 years from the date of order, whereas the limitation to file appeal to the Hon'ble Governor is 45 days from the date of order of punishment. Still taking a sympathetic view, Hon'ble Governor ordered to give a fresh hearing in which the order of punishment dated 04.02.2003 against the applicant was reaffirmed and upheld."

(Quoted from page 195 of paper book of the O.A.)

The respondent, therefore, contends that the application has no merit and deserves to be dismissed.



6) Though applicant has prayed for setting aside the orders dated 4.2.2003 it has merged into order dated 17.12.2011. Hence this Tribunal has to consider the legality of the order dated 17.12.2011.

Discussion and Findings:

7) The Applicant has raised various contentious issues in his O/A, however without going into all those, we propose to address ourselves to the impugned order in the context of the issues as regards non application of mind by the Government while passing order dated 17.12.2011.

8) Therefore limited issue for consideration is as under:

Whether the Government authority has applied their mind to the issues raised by the applicant before passing order dated 17.12.2011 Exhibit 'O' dated 17.12.2011 at page 166 & 167.

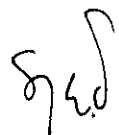
9) It is evident from the text of impugned order quoted in foregoing para 2(b), it is stated in the impugned order that no changes should be made in the findings of punishment as concluded on 04.02.2003.

10) Impugned is totally silent about reasoning on various issues raised by the applicant.

11) Order impugned in appeal has been confirmed on the found on the views of the lower authority says that it has been correctly passed. Thus the impugned order reveals an unusually classical way of abusively confirming an order appealed against, not because it is not vitiated, but on the opinion of lower appellate authority that it is right in issuing the impugned order. The manner in which the Government has acted, is a citation of gross non application of mind and reminds of the Wednesbury's principle.

12) We, therefore, find that the impugned order issued on 17 December 2011 is illegal and, therefore, we set aside the same. We further direct the appellate authority to reconsider and decide the representation/Revision application submitted by the applicant within 2 months from the date of this order. All defences raised and as would be raised by the applicant are be deide as kept open.

13) Therefore OA is allowed in terms of direction contained in foregoing para.



14) Records show that this Tribunal passed order on 18.06.2018 as follows:-

"18.06.2018, A.H. Joshi, Chairman

1. Heard Shri V.U. Sherkhane, the Applicant in person and Ms. N.G. Gohad, the learned Presenting Officer for the Respondents.
2. Learned P.O. for the Respondents prays for two weeks time for filing reply.
3. Time may be granted however it is necessary to bring an accrued anomaly to the impugned order with the hope that impugned order can be withdrawn.
4. Impugned order contains as follows:-
 "अपिलीय प्राधिकार्यांनी श्री. शेखाने यांच्या विभागीय चौकशी प्रकरणाची छानबीन करून श्री. शेखाने यांच्या दि.४.२.२००३ अन्वये बजावण्यात आलेल्या शिर्षेमध्ये बदल करण्यात येऊ नये असे स्पष्ट मत दिले. त्या अनुषंगाने श्री. शेखाने यांचा दि. ४. २.२००३ च्या शिक्षा आदेशाविरुद्ध केलेला अपील अर्ज फेटाळण्याचा निर्णय शासनाने घेतला आहे."
 (quoted from page no.166 of the O.A.)
5. It is further evident that the Appellate Authority had not applied its own mind and simply acted upon the recommendation and remark of the Appellate Authority whose decision was under challenge before the Hon'ble Governor which case was transferred and entrusted to the Hon'ble Minister.
6. It is therefore expected that the Government should volunteer to reconsider the Applicant's revision application.
7. At this stage, learned P.O. for the Respondents prays for four weeks time to take instructions as to whether Government would reconsider applicant's case..
8. Time as prayed for is granted.
9. Steno copy and Hamdast is allowed.
10. Learned P.O. for the Respondents is directed to communicate this order to the Respondents.
11. S.O. to 24.07.2018.

Sd/-
 (A.H. JOSHI, J)
 CHAIRMAN

(quoted from Farad Order Dated 18.06.2018 of the O.A.981/17)

15) By direction contained in para 6, quoted in foregoing para, the Respondents were given chance to re-examine the matter, in the background of the fact that appellate authority had not applied mind.

16) When case was heard, the learned P.O. submitted that the Government does not want to reconsider the matter. It is sad that even in the background of special chance and caution, the Government is stubborn. It is seen that though matter was put up to the specific notice of Government and decision was sought, since the Government or subordinate Officer/ bureaucrats do not wish to re-examine the matter, and this tribunal is constrained to adjudicate, and decide the case by a Judgement. The Officers could have put up suitable note or and could have solicited before the Government for reconsideration to avoid a blame of being unjust and egoistic. It is thus evident that either due to being egoistic or being starved of proper legal advisers, the respondents have invited judgements.

17) Therefore, while this Tribunal is satisfied to partly allow the Original Application, the respondents need to be chastised for refusal to reconsider the matter. While Application succeeds, the state has to be saddled with cost payable by Respondents to the applicant to the tune of Rs 15,000/-. The amount of costs be first paid by Government and Respondent No.1 shall be free to recover the amount from any officer who may be responsible for dragging pending case and for being instrumental for inviting an order.

18) The amount of cost shall be paid to the applicant by crediting it in pension account of applicant, directly.

Sd/-
(P.N. Dixit)
Member(A)

Sd/-
(A.H. Joshi (J.))
Chairman

Place : Mumbai

Date : 25.01.2019

Dictation taken by : N.M. Naik.