

THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI**ORIGINAL APPLICATION NO.388 OF 2016**

DISTRICT: MUMBAI

Shri Vikram Bhaskar Bagayatkar,)
 354/44, Manorath Sah. Housing So. Ltd.,)
 Sector-3, Charkop Kandivali (West),)
 Mumbai 400 067.) **.. Applicant**

Versus

1) The State of Maharashtra,)
 Through Secretary,)
 Finance Department,)
 Mantralaya, Mumbai 400 032)

2) The Director of Insurance,)
 Maharashtra State,)
 MHADA Bhavan, Bandra (East),)
 Mumbai 400 051) **..Respondents**

Shri C.T. Chandratre, the learned Advocate for the Applicant.

Smt. Archana B.K., the learned Presenting Officer for the Respondents.

CORAM : JUSTICE SHRI A.H. JOSHI, CHAIRMAN

RESERVED ON : 30.08.2016.

PRONOUNCED ON : 07.09.2016.

J U D G M E N T

1. Heard Shri Shri C.T. Chandratre, the learned Advocate for the Applicant and Smt. Archana B.K., the learned Presenting Officer for the Respondents.
2. Heard both sides. Perused the record annexed to the O.A..

3. Respondent No.2 had passed an order dated 15.03.2013 imposing upon the Applicant punishment of compulsory retirement from the service. Applicant's retirement was due on 30.09.2013.

4. Applicant preferred an appeal against the order of punishment. The appeal was allowed and punishment was modified to censure.

5. Documents on record show that by order dated 29.11.2014, (copy whereof is at page no.20, Annexure A-6 of the paper book) the Government has granted the Applicant Salary and allowances to the extent of 95%. Relevant text of the order granting 95% Salary and Allowances reads as follows :-

“आ) यापैकी निलंबन कालावधी साठी श्री. बागायतकर यांना यापूर्वीच संचालक, विमा संचालनालय यांनी निलंबन कालावधीत दिलेला ५०% व दि.१० फेब्रुवारी, २०१४ च्या कार्यालयीन आदेशाद्वारे मंजूर केलेला वाढीव २५% निर्वाह भत्ता मिळून एकूण ७५% इतका दिलेला आहे.

१) दि.९.७.२०१० ते दि.१४.३.२०१३ या निलंबन कालावधीसाठी केवळ (९५% - ७५%) २० % एवढा देय ठरेल.

२) दि.१५.३.२०१३ ते दि.२४.९.२०१३ या सेवाबाह्य कालावधीसाठी (६ महिने १० दिवस) ९५% रक्कम देय ठरेल.”

(Quoted from page 21 of O.A. paper book.)

6. By another order dated 16.03.2015 which is impugned in this O.A., the period during which Applicant was under suspension is treated as period not spend on duty.

7. After hearing both sides and perusal of record, the situation that has emerged, presents a paradox, as follows:-

By order dated 29.11.2014, Applicant was held eligible and has been paid salary and allowances for the period between 09.07.2010 to 24.09.2013 to the extent of 95% of salary and allowances, while by the impugned order the period of suspension is period not spend on duty suggesting that he may not earn any salary as well as credit could be available to him towards said period.

8. Another aspect which is obvious and is evidenced from the order dated 26.08.2013 is as follows :-

(a) Applicant was dealt with for disciplinary action for nine charges.

(b) Enquiry Officer held that Charge Nos.2 to 9 were not proved, and held that the Charge No.1 was partly proved.

- (c) In so far as Charge No.1 is concerned which is held partly proved, it reads as follows :-

“१. कार्यालयीन कामात संबंधित वरिष्ठांच्या आदेशाचे उल्लंघन करणे, त्यांची अवहेलना करणे, कार्यालयीन कामात बेजबाबदारपणा, निष्काळजीपणा करणे, शासकीय काम टाळून खोटे बोलणे, कार्यालयीन कामात एकाग्रता नसल्यामुळे अक्षम्य चुका करणे, महालेखापालांचे कार्यालयातील महत्वाच्या बैठकीस गैरहजर राहून बेपर्वाईचे वर्तन करून प्रौढी मिरविणे, वरिष्ठांशी वाद घालून शिरजोरपणे बोलणे.”

(Quoted from Annexure – 3, page 11 of O.A. paper book.)

- (d) As regards this charge i.e. Charge-1, the order contains findings which is as follows :-

“i) दोषारोप क्र.१ विमा संचालनालयाकडून प्राप्त नस्तीतील कागदपत्र पाहता तसेच पूर्वसूचना न देता महालेखापालांकडील बैठकीस गैरहजर राहणे व त्या अनुषंगाने श्री. बागायतकर यांना दि. ३१ जुलै, २००९ अन्वये दिलेले ज्ञापनातील दोषारोप सिध्द होतात. तथापि या बैठकी कालावधी दरम्यान श्री. वि.भा. बागायतकर यांनी ते आजारी असल्याचे नंतर कळविले असून त्यांनी सादर केलेले वैद्यकीय प्रमाणपत्र असतातना त्यांचा हा कालावधी शिक्षा म्हणून वैद्यकीय कारणास्तव असाधारण रजा म्हणून मंजूर केलेला आहे. मात्र वरिष्ठांच्या आदेशांचे उल्लंघन, प्रौढी मिरविणे व वरिष्ठांशी वाद घालून शिरजोरपणे बोलणे या बाबी ठोस कागदपत्र पुराव्या अभावी स्पष्ट होत नाहीत. सदर दोषारोप अंशतः सिध्द होतात.”

(Quoted from page 12 and 13 of O.A. paper book.)

9. What is held by the appellate authority is that, part of the charge is proved as “अंशतःसिध्द”.

10. The factual aspect which appears as residue of Charge no.1 which can be isolated as “partly proved” is of proceedings on leave without prior intimation. However, part of the text quoted in foregoing paragraph i.e. clause (c) and (d) reveal that the leave for the said alleged absence without leave on the ground of sickness, has been sanctioned as sick leave.

11. The effort of the Respondents is to exert to hold the applicant guilty at the costs of recording a finding which contains a paradox and / or an inbuilt contradiction.

12. It is evident that the defence taken by the State before this Tribunal that is of simple reiteration, of the findings of appellate order, referred to / quoted in foregoing paragraph and nothing else.

13. In the background that out of nine charges, eight charges were held as not proved, and the findings relating to one charge in which it is held that it is partly proved, is a findings which is vitiated due to contradiction. Said finding that guilt or misconduct is partly proved, deserves to be described as one, which is based on conjunctures and is perverse.

14. It is thus evident that the Applicant cannot be punished for no fault on his part.

15. In the result impugned order deserved to be set aside, and is set aside. It is held and declared that :-

- (a) The period of suspension is treated as period spent on duty.
- (b) Applicant would be entitled to the difference between salary and allowances actually paid to him and to which he was eligible and one and of all consequential benefits which have to follow, due to treating period under suspension as period spent on duty.

16. Applicant is awarded costs of Rs.15,000/- from the Respondents, which be paid to applicant while paying him arrears within three months from the date of receipt of this order.

(A.H. Joshi, J.)
Chairman

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