IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

ORIGINAL APPLICATION NO.670 OF 2016

DISTRICT : NAVI MUMBAI

Dr. Chandrakant Gunda Gaikwad.)
Age : 61 Yrs, Occu.: Retired as Assistant)
Director of Health Services (Malaria &)
Filaria), Having office at 22, E/48, Sector)
12, Ajinkyatara CHS, Kharghar,)
Navi Mumbai.)...**Applicant**

Versus

The State of Maharashtra.)
Through the Principal Secretary,)
Public Health Department,)
Mantralaya, Mumbai - 400 032.)...**Respondent**

Mr. A.V. Bandiwadekar, Advocate for Applicant.

Ms. N.G. Gohad, Presenting Officer for Respondent.

P.C. : R.B. MALIK (MEMBER-JUDICIAL)

DATE : 23.03.2017

JUDGMENT

1. The Applicant, a retired Assistant Director of Health Services (Malaria & Filaria) disputes the correctness of the order dated 28th July, 2015 made by the disciplinary authority, the State of Maharashtra – the Respondent herein whereby upon a departmental enquiry (DE) held under ten heads of charges, 50% of his pension was docked permanently. The said order was confirmed in appeal which was heard by the Hon'ble Minister of State in Industries, Mines and PWD Department. By the order of 26.5.2016, the said appeal was dismissed. Both these orders are the subject matter of the challenge in this Original Application (OA) under Section 19 of the Administrative Tribunals Act, 1985.

2. At the time relevant hereto, the Applicant was working as Superintendent in St. George's Hospital here in Mumbai.

3. The charge was as already mentioned at the outset ten headed. The period relevant therefor was 4.3.2008 to 2.6.2011. The Respondent appointed Regional Enquiry Officer Mr. S.N. Rankhambe to hold the DE against the Applicant.

4. The first charge was that, during the above period, the Applicant allegedly abused his position and used premises for ladies for his own use as a Gym. This charge was held to have been proved. The charges 2 and 5 can be taken together. The allegations were that the Applicant allegedly misused unauthorizedly the ambulance of the St. George's Hospital for his own purposes though he did not have the requisite license for driving the vehicle. He allegedly used the fuel (petrol) for the said vehicle from the official grants. The 2nd charge was held to have been proved and so also was held proved the 5th charge. The 3rd charge was that the Applicant made some kind of an unofficial and unauthorized reservation of the VIP Nursing Home thereby causing loss to the exchequer. This charge was held to have been proved partially. The 4th charge was that the Applicant did not make sure during his tenure that the precincts of the Hospital were kept in a hygienic condition and safe from the rodents, flies, and insects etc. He failed in his duty as Head of the Department in that behalf. This charge was held not proved. The 6th charge was that the Applicant got his food prepared from the official cook in order to entertain his personal guests. This charge was held not proved. The 7th charge was that the Applicant retained a costly camera of the Hospital which charge was also held not proved. The 8th charge was that

the Applicant in the matter of considering the leave applications of a lady named there, working as a Staff Nurse caused to her mental tension by not granting her leave and treated her with disdain in an insulting manner. This charge was held to have been proved partially. The 9th charge was that on account of the controversial ways adopted by the Applicant *inter-alia* by using filthy words, treating the Officers and employees insultingly and adopting obstructionist attitude and also demanding money for due performance of his official work thereby vitiating the atmosphere of the Hospital. In a three line reasoning, it was observed as follows by the Enquiry Officer (in Marathi).

> "चौकशी अधिका-यापुढे ज्या साक्षीदारांची साक्ष नोंदविण्यात आली, त्यापैकी बहुतांशी साक्षीदारांनी डॉ. गायकवाड, अधिक्षक हे त्यांच्याशी कशाप्रकारे अयोग्यरितीने वागले याचे अनुभव साक्षीमध्ये कथन केले आहेत. त्यावरून सदर दोषारोप बाब क्र.९ सिध्द होते असे माझे मत आहे."

The 10th and the last charge was some kind of a summary of all the earlier charges and it was alleged that by the acts of the Applicant, the name of the St. George's Hospital was sullied and the proceedings before the Courts and the Lokayukta arose. The finding on this charge was also cryptic and it was held proved.

5. This report was submitted on 21.2.2014. The disciplinary authority by the order dated 28th July, 2015 (Exh. 'A', Page 18 of the Paper Book (PB)) held that the Applicant was liable to be punished with docking of 50% of his pension permanently. At this stage, it also needs to be mentioned that the date of birth of the Applicant is 1.6.1955 and he retired as Assistant Director of Health Services (Malaria and Filaria) on 31.5.2013. The charge-sheet at Exh. 'C' (Page 31 of the PB) was dated 31.3.2012. It, therefore, become quite clear that when the Applicant demitted the Office on superannuation, this enquiry was already pending. However, there is not even a particle of material to show that he was informed that the enquiry would continue on account of the fact that the charges against him were grave. The whole thing continued as if, it was a case of normal disciplinary enquiry. I shall to the extent necessary elaborate this aspect of the matter presently. However, it needs to be mentioned that the enquiry against the Applicant commenced when he was still in service but it spilled over post retirement.

6. Even as these proceedings were pending, the Applicant himself made several representations *inter-alia* on the ground that his retirement was approaching, and therefore, the enquiry should be completed at the earliest.

For the same relief, he brought before this Tribunal **OA 218/2013 (Dr. Chandrakant G. Gaikwad Vs. The State of Maharashtra, dated 18.4.2013)**. The Bench of the Hon'ble Chairman speaking through the Hon'ble Vice-Chairman observed *inter-alia* and in effect that the enquiry did not go on with the kind of seriousness that it ought to have been. The last paragraph No.5 needs to be quoted.

> "**5.** In view of the above facts and circumstances of the case, the Applicant is justified in praying for direction to the Respondent to complete the D.E. against him expeditiously. We accordingly direct the Respondent to complete the D.E. against the Applicant expeditiously, preferably within a period of 4 months from the date of this order. The final order in the D.E. must be passed within the said period and the decision communicated to the Applicant. There will be no order as to costs."

7. It appears that the Tribunal having given four months time, the enquiry could not be completed within time and the present Respondent brought MA 370/2013 for extension of time to comply. By an order of 4.10.2013, the Tribunal extended the time upto 15th February, 2014

and disposed of the said MA. It must have become clear from the above mentioned dates that in fact, the full compliance was not made within the time limit prescribed even after extension and in fact, it was decided by the disciplinary authority on 28.7.2015 and no extension was sought for the same from the Tribunal. The Applicant preferred an appeal against the said order which was, as already mentioned at the outset heard by the Hon'ble Minister of State in Industries, Mines and PWD. By the order of 26.5.2016, the said appeal was dismissed, thereby maintaining the punishment imposed on him in the disciplinary enquiry. The appeal was obviously preferred before His Excellency the Governor of Maharashtra who marked it to the Hon'ble Minister. The Applicant is aggrieved by both the orders and is up before me by way of this OA.

8. I have perused the record and proceedings and heard Mr. A.V. Bandiwadekar, the learned Advocate for the Applicant and Ms. N.G. Gohad, the learned Presenting Officer for the Respondents.

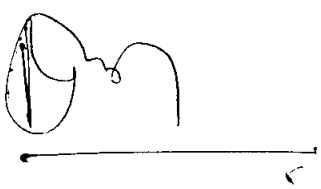
9. The above discussion must have presented a proper factual parameter which to work within. I attach considerable significance to the fact that the Respondents

did not get themselves armed with permission to continue the DE after the time limit fixed by this Tribunal even in MA 370/2013 expired. Once a particular direction is given by a judicial authority to act in a particular manner as regards the time frame within which the work must be completed, then the authorities concerned have no freedom to freely and at will violate the said condition. The above discussion must have made it quite clear that the Respondents treated the whole matter casually and exhibited a tendency to show as if there was no direction issued by the Tribunal. The fact that their move had once succeeded should in fact have guided them to make sure that they acted within the time stipulated and if it was absolutely impossible for them to do so, then at least to seek a further extension of time. I am not prepared to dismiss all these aspects of the matter as technical. It is not just a matter of a particular direction from a judicial forum but the issue is to maintain the majesty of the judicial institution and a need to uphold it. I consider this as a significant blot on the Respondents. I make it very clear that even as I shall complete the discussion but irrespective of whatever be the conclusion drawn, "on merit", the OA will still be allowed because the Respondents took the whole process of justice casually and defiantly flouted the orders of the Tribunal. Therefore, my

finding is that whatever I hold on merit of the matter on this significant point, I would be so inclined as to uphold this OA. This aspect of the matter must be carefully borne in mind as I proceed further.

10. The above discussion must have made it clear that in as much as the DE started when the Applicant was in service got concluded only after his retirement, and therefore, going by the mandate of **Chairman/Secretary of Institute of Shri Acharya Ratna Deshbhushan Shikshan Prasarak Mandal, Kolhapur Vs. Bhujgonda B. Patil : 2003 (3) MLJ 602**, the governing provision would only be Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982. Another Judgment in the field is a Division Bench Judgment of the Hon'ble Bombay High Court in **Madanlal Sharma Vs. State of Maharashtra : 2004 (1) MLJ 581** and also an earlier Judgment of this Tribunal in **OA 198/2002 (Shri Marutrao K. Gurav Vs. The State of Maharashtra, dated 10.7.2002)**.

11. It may also be mentioned that the continuation of enquiry post retirement would be valid only if there was a categorical pronouncement in that behalf that the enquiry would proceed further because the charges were grave.



For this proposition, useful guidance could be had from **D.V. Kapoor Vs. Union of India : AIR 1990 SC 1923**.

12. It also needs to be mentioned that in matter like the present one, this forum exercises the jurisdiction of judicial review of administrative action. There are constraints of jurisdiction and restraints of the exercise of power. This is not an appellate jurisdiction in which case, the whole matter gets reopened before the appellate authority and the appellate authority can do and undo everything that the authority of the first instance could do or undo or even more. Here, the matter of concern would be as to whether the process of reaching the conclusion was informed by the principles of natural justice. The conclusion itself would not be that much important because on a mere possibility of existence of another point of view on the same set of facts, which to the judicial forum might appear to be more appropriate, it will still not even intervene much less interfere. I must repeat that the crux of the matter would be as to whether the principles of natural justice were followed both at the time of recording of evidence, evaluation of the evidence and making of an order. If the conclusion drawn was a plausible one on the set of facts such as it presented itself, then the Tribunal may not just for the asking disturb the administrative

findings. Similarly, in the conduct of the DE, the strict and rigorous procedural provision enshrined in the Codes of Civil and Criminal Procedure and Indian Evidence Act and such other procedural laws would in terms not apply. But here again, it will have to be made sure that the Applicant received a fair and just treatment and he was allowed to cross-examine the witnesses of the Department and if he was so minded, he was given facility and scope to lead positive evidence of himself and his witnesses. The evaluation of the material adduced which for the purpose of expression can be called 'evidence' would be such as to be in line of preponderance of probability and not proof beyond reasonable doubt which is the degree of proof required to be adduced in a criminal trial. This then is the legal parameter which to work within.

13. Remaining within the confines as set out hereinabove, it must still be mentioned that anything and everything dished out by the Department howsoever fantastic, it could be need not necessarily be accepted by the judicial forum. The jurisdiction may be restricted and constricted, but it is not as if, there is no jurisdiction at all. By an artificial process of reasoning, the circumspection enshrined by law on the jurisdiction, cannot be reduced to no jurisdiction, and therefore, the Tribunal will have to

peruse the material such as it was before the authorities below at least to find out if the conclusions drawn were such as to survive the reasonable man's test. For that purpose obviously, the record will have to be perused.

14. Returning to the facts in the above background, I find that the general tone and tenor of the report of the Enquiry Officer leaves a lot to be desired. As an instance, I have already quoted a three line reasoning only to exemplify that although one might not expect a judicial order like precision and sophistication from the Enquiry Officers in DEs, but still once it appeared that the EO was aware of the significance of giving proper reasoning, if he did not do it, then in my opinion, such a report would be severely vulnerable. At least in case of three heads of charges, he has exonerated the Applicant. Still again, under a few heads of charges, he has held that they were partly proved. He has not briefly given the reasons as to which part was proved and which part was not proved. This aspect of the matter would assume significance when one considers the orders of the disciplinary authority.

15. In that view of the matter, therefore, it was all the more necessary for the disciplinary authority to carefully examine the report of the Enquiry Officer. No doubt, in so

far as agreement with the Enquiry Officer was concerned, no detailed reasoning may have been given, but then, when something stares one at the face like the findings of part proof of the charges, I do not think, the whole thing can be just made light of.

16. In view of the foregoing, when on the *ex-facie* reading of the report, the conclusions become clear as mentioned above then I may as well not meticulously examine the material on record of the DE, so that there would be no occasion to consider as to whether and to what extent, I could examine the same and as to whether I could evaluate the said material. After-all, the report of the Enquiry Officer is not something that can be held to be so sacrosanct as not to be even looked at. In all fairness, it was not anybody's case before me either.

17. Turning now to the order of the disciplinary authority being the Government of Maharashtra in Public Health Department which has already figured in the above discussion, the charges have been set out verbatim. It is then observed as to how the Enquiry Officer was appointed and as to how his report of 21st February, 2014 was submitted. Four charges were held to be partially proved. Two charges were held to be proved and three charges viz.

4, 6 & 7 were held not proved. It may be recalled that the details of the said charges have already been set out hereinabove. The order of the disciplinary authority then mentions that in respect of charges 3, 4, 7 and 8, a Memorandum of Disagreement was served on the Applicant and he gave his response thereto. In as much as he had retired by then, another show cause notice was issued to him and then without any reasoning at all, the decision has been set out that 50% of the pension will be permanently docked. As far as what can be called as Memorandum of Disagreement, the same is at Exh. 'R-1' (Page 146 of the PB) and I am afraid, there are no convincing reasonings mentioned. It is a common knowledge that the Hon'ble Supreme Court in **Yoginath D. Bagde V/s. State of Maharashtra & Anr. : (1999) 7 Supreme Court Cases 739** was pleased to lay down the law in that behalf. It appears that, thereafter, Rule 9(2) came to be inserted by Notification dated 10.6.2010 in D & A Rules. The mandate of the law and the case law, *inter-alia* is that the disciplinary authority who himself was not the enquiring authority in the event of such a disagreement should make a tentatively reasoned order, forward it to the concerned Government servant asking him if he so desired to submit a written explanation and thereafter, the disciplinary authority would be obliged to

consider the representation, if any, submitted by the Government servant and record his finding before proceeding further. It is, therefore, very clear that howsoever short or brief the reasoning might be, there has to be the reasoning which must appeal to a reasonable person with regard to the disciplinary authority's deposition in the matter of disagreement. In the name of reasoning whatever has been done vide Exh. 'R-1' (Page 146 of the PB) is only a paraphrasing of the allegations. I must repeat that it may not be quite practical to expect that the orders of the authorities would be so sophisticated as the judicial orders could be, but still there has to be the reasoning which would give an index of the mindset, more particularly, when the law laid down by the Hon'ble Supreme Court in **Yoginath Bagde's** case and the consequent amendment of the Rules are what they are. I must, therefore, unhesitatingly hold that the order of the disciplinary authority leaves a lot to be desired.

18. The appellate order is also such as to practically reproduce the charges and in so far as the conclusions are concerned, it is an instance, not so much of reasoning as mere paraphrasing of the allegations. The facts falling within the Judgment of the Hon'ble Supreme Court in **Yoginath Bagde** (supra) and the consequent amendment

to the Rules did not engage the attention of the appellate authority at all. I must, therefore, hold that the impugned orders are susceptible to interfere by this Tribunal.

19. The learned PO Ms. Gohad relied upon **Regional Manager, U.P.S.R.T.C Vs. Hoti Lal & Anr. : Appeal (Civil) 5984 of 2000, dated 11.2.2003**. She laid particular emphasis on the observations of the Hon'ble Supreme Court that in the matter of punishment imposed by the disciplinary authority, the Courts or Tribunals should be extremely slow in interfering. She also relied upon another Judgment of the Hon'ble Supreme Court in **Deputy Commissioner, KVS & Ors. Vs. J. Hussain : Civil Appeal No.8948 of 2013, dated 4th October, 2013**. It was held by Their Lordships that unless the punishment awarded was outrageously disproportionate, the Tribunal or the Courts should not interfere in the matter of exercise of discretion by the disciplinary authorities. Another Judgment of the Hon'ble Supreme Court was **Civil Appeal No.11975/2016 arising out of SLP (C) No.30710 of 2014 (The Chief Executive Officer, Krishna District Cooperative Central Bank Ltd. & Anr. Vs. K. Hanumantha Rao and another, dated 9th December, 2016**. In that matter, by the order impugned before the Hon'ble Supreme Court, the Hon'ble Supreme Court was

pleased to prescribe its own punishment for the punishment imposed by the disciplinary authorities and the Hon'ble Supreme Court held that such a course of an action could not be adopted.

20. Before concluding, I may recall that I have already cited **Bhujgonda Patil, Madanlal Sharma, D.V. Kapoor and Marutrao Gurav** hereinabove. It is clearly held in the above case law that if the enquiry has to spill over post retirement, then there has to be a clear order indicating the disposition of the employer that he was so minded as to do it because the charges were grave. The mere fact that the enquiry continued post retirement, will not *ipso-facto* be sufficient to infer that this obligation on the employer had been discharged. In that behalf, the observations made in the above case law which in effect lead to the conclusion that normally, continuation of any enquiry commenced pre-retirement would automatically come to an end on retirement unless the employer complied with what has been held in the said case law. It is possible that from the material available on record, it could be exhibited that the employer was so minded as to treat it as a grave misconduct, but then that again, cannot run counter to the express observations of Their Lordships in the above case law and I would, therefore, conclude by

holding that, examine it from any angle and the impugned orders cannot sustain.

21. The orders herein impugned stand hereby quashed and set aside. The departmental enquiry against the Applicant which spilled over post retirement stands quashed and set aside and so also, is quashed the punishment imposed on him. The Applicant shall be entitled in the event, the amount has already been deducted to be refunded within a period of four weeks from today and it is directed that no deduction shall be made hereinafter. The Respondents shall so conduct themselves vis-à-vis the Applicant as if the impugned orders were never made. The Original Application is allowed in these terms with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
23.03.2017

Mumbai
Date : 23.03.2017
Dictation taken by :
S.K. Wamanse.
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