

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.782 OF 2018

Shri Prabhakar Kashiram Sawant)
Ex-Superintendent in the office of Joint)
Charity Commissioner, Latur,)
R/o. Tapassaya, 504, 5th floor, Bhawani)
Shankar Road, Dadar (W), Mumbai 28) **....APPLICANT**

VERSUS

1) The Charity Commissioner)
M.S. Mumbai, Having Office at)
Charity Commissionerate Bhawan,)
3rd floor, 83, Dr. Anie Besant Road,)
Worli, Mumbai 18)
2) The State of Maharashtra,)
Through Principal Secretary and)
R.L.A. and the Appellate Authority)
Law and Judiciary Department,)
Having office of Mantralaya,)
Mumbai 400 032) **...RESPONDENTS.**

Mr. K.R. Jagdale, learned Counsel for the Applicant.

Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents

CORAM : **Justice Mridula Bhatkar (Chairperson)**
Ms. Medha Gadgil, Member (A)

RESERVED ON : **10.06.2024**

PRONOUNCED ON : **02.08.2024**

J U D G M E N T

1. Applicant, Ex-Superintendent in the office of Joint Charity Commissioner challenges order of dismissal dated 03.05.2017 for misconduct of taking bribe of Rs.2 lakhs when he was working as Inspector, Public Trust.

2. Learned Counsel Mr. Jagdale has argued that the charges in order dated 21.11.2015 passed in A.C.B. Special Case No.35/2014 by the Special Judge under Prevention of Corruption Act at Mumbai and charges framed in the Departmental Enquiry are identical. Hence, the Enquiry Officer should have withdrawn the D.E. against the Applicant as the Applicant was acquitted by order dated 21.11.2015. He has submitted that the Enquiry Officer should have taken into account the acquittal order dated 21.11.2015. Applicant was acquitted as the prosecution had failed to prove that the Applicant has demanded and accepted the amount in question and it was recovered from the possession of the Applicant. The appointment of the Enquiry Officer is challenged on the ground that the Enquiry Officer should have been appointed on contractual basis as per G.R. dated 26.05.2006.

3. Learned Counsel has argued that by letter dated 26.10.2014 Applicant made representation to the Department to give permission to appoint lawyer to defend him in the D.E. initiated against him. However, the said request was rejected. On this pointed learned Counsel has relied on judgment dated 23.11.1987 decided by the Hon'ble High Court in the case of K.D. Anpat & Ors. Vs. State of Maharashtra & Ors. He has submitted that the request of the

Petitioner in the said case for engaging legal practitioner was illegally rejected by order dated 26.10.2015. Learned Counsel has relied on paragraph 8 of the order dated 21.06.2019 passed in O.A.No.444/2019, Shri Avinash R. Lembhe & Anr. Vs. The State of Maharashtra & Ors. It is regarding appointment of legal practitioner in D.E. While passing dismissal order dated 03.05.2017 applicant's defence was not taken into consideration. He submitted that the quantum of punishment is disproportionate. Applicant's date of superannuation is 31.07.2020.

4. Learned P.O. has relied on the affidavit-in-reply dated 09.10.2018 on behalf of Respondents No.1 and 2 through Mr. Mohan D. Gade, Assistant Charity Commissioner, Greater Mumbai Region, Mumbai. She has argued that in the course of enquiry the applicant did not challenge the appointment of Enquiry Officer in any manner. The Applicant also did not indicate any prejudice caused to him due to rejection of his request to permit him to appointment Advocate for him. The judgment of the Sessions Court is not binding on the authority who conducts the Departmental Enquiry against the Applicant. The appeal filed by the Applicant was heard and rejected on merits. The Applicant is trying to take undue advantage of his acquittal by the Hon'ble Special Court which cannot be given in the D.E. The Respondents have followed the procedure properly and thereafter he was punished by issuing the order of dismissal. She drew our attention to the recorded transcription of the conversation which took place between the complainant and the delinquent officer at the time of raid, revealing and demand and transaction of the bribe amount.

5. We have gone through the Enquiry Report which was conducted by the Assistant Charity Commissioner and also order dated 03.05.2017 passed by the Appellate Authority i.e. Charity Commissioner, Mumbai. The Delinquent Officer was facing the charge of accepting Rs.2 lakhs on 18.04.2012 as a bribe from the complainant Mr. Surendra Kadam. The Delinquent Officer was acquitted by the Sessions Court on 21.11.2015 the ground of benefit of doubt, but the authority continued the Departmental Enquiry even after acquittal in Criminal Case. The Applicant was facing charge of misconduct of acceptance of the bribe. The Enquiry Officer has considered the evidence of one Ms. Shobha Tendulkar in whose presence the demand of bribe was made. The Enquiry Officer has accepted the evidence of complainant Mr. Kadam that he gave amount of Rs. 2 lakhs in the envelope to the Delinquent Officer. The amount was recovered from the possession of the Delinquent Officer i.e. Applicant. The transcription of the conversation between the complainant and the delinquent officer demanding the bribe was placed on record.

6. We have gone through the said judgment. It is the judgment in the Criminal trial wherein the degree of standard of proof is much higher than the proof required in the D.E. All the facts are required to be strictly proved beyond reasonable doubt in the Criminal Trial to hold the accused guilty and it is not the same case in the Departmental Enquiry.

7. In the present case, the enquiry was conducted by the Assistant Charity Commissioner of the Public Trust Department. On this point

learned Counsel has relied on paragraph 18 of the judgment dated 07.06.2002 passed in O.A.No.546/2001 & 703/1998, Mr. Rajendra Keshavrao Mokashi Versus The State of Maharashtra & Ors. The judgment of Mokashi is about Police Department and in respect of G.R. dated 29.12.1988 and Circular dated 10.01.1992. The said judgment is not applicable or is irrelevant to the facts of the present case as it does not discuss the G.R. of 2006. In G.R. dated 26.05.2006 in order to expedite the Departmental Enquiry the G.A.D. in this G.R. has taken a policy decision to appoint the retired officers on the panel on contract basis. This G.R. provides enabling provision to appoint Enquiry Officer on contract basis. However, if a competent officer in the Department or Establishment itself is available and appointed it cannot be considered as procedural lapse.

8. At the time of enquiry the applicant by his application dated 19.06.2015 has requested the Charity Commissioner to allow him to take assistance of a lawyer. However, the Charity Commissioner by his letter dated 26.10.2015 has rejected the said request. It appears that the Presenting Officer before the Enquiry Officer was not a lawyer. Moreover, the applicant has not challenged the said order further and has appeared and faced the enquiry. Therefore at this stage this cannot be a good ground that for want of legal assistance for the applicant his enquiry is vitiated. We have gone through the Enquiry Report dated 31.03.2017. We find that the Enquiry Officer has considered the evidence and record of Mr. Kadam who is original complainant and also Ms. Tendulkar. He has also considered the memorandum drawn at the time of trap of the amount of Rs.2 lakhs

which was recovered from the drawer of the table of the delinquent officer.

9. The Tribunal has no power to look into the appreciation of evidence or any other aspect which the Appellate Court has. Whether the Enquiry Officer has followed proper procedure and principles of natural justice are breached is the area to be examined by the Tribunal. No procedural flaw is brought on record. Applicant is facing the imputation of misconduct of accepting the illegal gratification, which is a misconduct of moral turpitude and unbecoming of Government servant. Hence, punishment of dismissal is appropriate. No indulgence is required. O.A. stands dismissed.

Sd/-

(Medha Gadgil)
Member (A)

prk

Sd/-

(Mridula Bhatkar, J.)
Chairperson