IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

ORIGINAL APPLICATION NO.804 OF 2011

DISTRICT : KOLHAPUR

Satappa Rangrao Desai.)
Age : 51 years, Occ.: Nil, R/o. A/P. Gargoti)
(Sonali), Tal.: Bhudargad, Dist : Kolhapur.)**...Applicant**

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai - 400 032.)

2. Deputy Director of Land Records,)
Pune Region, Shastri Nagar, Near)
Telephone Bhavan, Pune.)

3. The Superintendent of Land Records.)
Juna Budhwar Peth, Kolhapur.)

4. The Settlement Commissioner &)
Director, Land Records, M.S, Pune.)**...Respondents**

Shri K.R. Jagdale, Advocate for Applicant.

Smt. K.S. Gaikwad, Presenting Officer for Respondents.

CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)
R.B. MALIK (MEMBER-JUDICIAL)

DATE : 22.01.2016

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

JUDGMENT

1. This Original Application (OA) under Section 19 of the Administrative Tribunals Act, 1985 (Act hereinafter) is made by a dismissed Peon of the office of Superintendent of Land Records, Kolhapur. The order of dismissal made by the disciplinary authority was confirmed in appeal and revision.

2. We have perused the record and proceedings and heard Shri K.R. Jagdale, the learned Advocate for the Applicant and Smt. K.S. Gaikwad, the learned Presenting Officer for the Respondents.

3. This OA really has a checkered history so to say. The Applicant while serving as Peon fell on the left side of the disciplinary jurisdiction and a charge-sheet came to be served on him on 7.8.2001 inter-alia alleging financial impropriety of gross nature and actionable absence from duty. It will be proper to note the gist of the charge such as it was. It was a charge with three heads and as the matter progressed, the authorities subdivided them further more particularly, the first and second charge, but generally so speaking, the charge was three pronged. It

will be appropriate, if the same is reproduced for a proper understanding and grasp (in Marathi).

"**बाब एक** -

उक्त श्री साताप्पा रंगराव देसाई, शिपाई तालुका निरीक्षक भूमि अभिलेख, राधानगरी या पदावर दिनांक १.८.९७ पासून आज पर्यंत कार्यरत आहेत. सदर पदावर कार्यरत असताना त्यांनी सौ. सरस्वती शंकर जाधव राहणार- सुळंबी यांचे कडून रुपये ५००/-, श्री वसंतराव दत्तात्रय वेलेकर, राहणार - मोघर्डे यांचे कडून ५५०/- रुपये, श्री बाबूराव सखाराम थोरवत, रहाणार - सरवडे, ता. राधानगरी यांचेकडून १५००/- तसेच श्री बालालाल आप्पालाल बलवंड, रहाणार- तारळे, ता. राधानगरी यांचेकडून रुपये ५००/- श्री रजाक चंदूलाल नायकवाडी, २) अकोबा सकोबा सावंत वगैरे ६, ३)श्री वसंतराव बापूसाहेब जाधव यांचेकडून अनुक्रमे १५००/-, २००/-, १५००/- मोजणी फी भरतो म्हणून रक्कम स्विकारुन कार्यालयात मोजणी कामी अर्ज न देता कोषागारात भरले बाबत सौ.सरस्वती शंकर जाधव, वसंतराव दत्तात्रय बेलेकर, बाबूराव सखाराम थोरात व श्री बाबालाल आप्पालाल बलदंड यांना चलनाच्या खोटया छायांकित प्रती दिल्या आहेत. श्री देसाई यांनी सदरची चलने बोगस व बनावट तयार करुन छायांकित प्रती संबधितांना देवून अर्जदार यांच्याकडून रक्कम स्विकारुन त्यांची फसवणूक केली आहे. यात श्री देसाई यांचा असद्भाव दिसून येतो. श्री देसाई यांनी अर्जदारांच्या रकमेचा अपहार करुन शासकीय बनावट कागदपत्रे तयार करुन अर्जदारांना पुरविली आहेत. श्री देसाई यांचे सदरचे कृत्य चपरासी या नात्याने शासकीय कागदपत्र सांभळण्याच्या दृष्टीने घातक स्वरुपाचे व शासनाचे मालमत्तेच्या दृष्टीने हानी होणारे असे आहे. श्री देसाई यांच्या हातून घडलेल्या गैरकृत्यामुळे अर्जदाराने शासनाकडे तक्रारी अर्ज केले आहे. त्यामुळे शासनाची/ खात्याची प्रतिमा जनमाणसात मलिन झालेली आहे. श्री देसाई यांनी शासकीय सेवकास अशोभनीय असे वर्तन केले आहे. त्यांची सदरची वर्तणून महाराष्ट् नागरी सेवा (वर्तणूक) नियम, १९७९ चे नियम ३ चा भंग करणारी आहे.

बाब दोन :-

उक्त श्री साताप्पा रंगराव देसाई, शिपाई, तालुका निरिक्षक भूमी अभिलेख, राधानगरी या पदावर दिनांक १.८.९७ पासून आजपर्यंत कार्यरत असतांना त्यांनी मौजे - राधानगरी, ता.राधानगरी येथील आलेख क्रंमाक ३, सि.स.नं.२९० या शासनाचे मिळकतीमध्ये अनाधिकृतपणे स्वत:चे हस्ताक्षरात पेन्सिलने प्लॉट चा नकाशा तयार करुन श्री राजेंद्र बोबाडे हे नाव स्वत:चे हस्ताक्षरात नमूद करुन त्याची नक्कल देणेकामी नकाशा अनाधिकाराने तयार केला आहे. तसेच उक्त खातेदारांचे नावे मोजणी फी रु.२५०/- चे चलन भरुन तयार केले आहे. अशा रीतीने श्री देसाई यांनी आपले अधिकार कक्षेबाहेर जाउन मूळ अभिलेखा अनाधिकृतपणे दुरुस्ती केली आहे. सदरची त्यांची कृती ही शासनाची मिळकतीचे नुकसान करणारी असून अन्य इसमांचा फायदा होणेची असलेचे दिसून येते. सदर कामी त्यांचा असद्भाव दिसून

येतो. श्री देसाई यांची सदरची कृती हि महाराष्ट् नागरी सेवा (वर्तणूक) नियम, १९७९ चे नियम ३ चा भंग करणारी दिसून येते.

बाब तीन :-

उक्त श्री साताप्पा रंगराव देसाई, शिपाई, तालुका निरिक्षक भूमि अभिलेख, राधानगरी या पदावर दिनांक १.८.९७ पासून आजपर्यंत कार्यरत असतांना ते दिनांक ७.५.२००१ पासून आजतागयत शासकीय सेवेत अनाधिकृत स्वेच्छा गैरहजर राहिले आहेत. श्री देसाई यांचे अनाधिकृत स्वेच्छा गैरहजेरी मुळे शासकीय कामकाजात अडथळा निर्माण झालेला आहे. त्यांचे हातून महाराष्ट् नागरी सेवा (वर्तणूक) नियम, १९७९ चे नियम ३ चा भंग झालेला आहे.''

4. Very briefly translated in English, the first head of the charge was that while the Applicant collected from those that were named there various amounts, the same was not deposited in the office and fabricated photo-copy of the challans were given to those persons and the amounts thus recovered by him came to be misappropriated. The second head of charge was having acted unauthorizedly, inappropriately and outside the limits of his functions. He drew a map and recovered measurement fees. Thirdly, he was anauthorizedly absent from duty from 1.8.1997 to 7.5.2001.

5. An Enquiry Officer (E.O) came to be appointed after the Applicant submitted his reply of 16.8.2001. The enquiry went underway and dragged on and on. The Enquiry Report submitted his report to the disciplinary authority on 13.4.2004. Some kind of a show cause notice was issued to the Applicant in July, 2005 along with that

Enquiry Report. It is beyond the pale of any dispute that the EO held the Applicant not guilty of the various charges leveled against him. The disciplinary authority after scrutinizing the report for all practical purposes, disagreed and found fault with the manner of conduct of the enquiry and ordered a *denovo* enquiry to be held apparently on the same set of charges.

6. Thereagainst, the Applicant moved this Tribunal with **OA 659/2006 (Shri Satappa Rangrao Desai Vs. The Secretary, Revenue Department and 2 others, dated 27th April, 2007)**. The Bench of the then Hon'ble Chairman in deciding that OA found no substance in the case of the Applicant and in effect upheld the order of *denovo* enquiry. Directions came to be given to conclude the same on or before 31.10.2007. The Bench made observations expressing hope that the Applicant would cooperate with the EO.

7. Now, before we proceed further, it will be appropriate to deal with one point which was very seriously urged by Mr. Jagdale, the learned Advocate for the Applicant. His argument was based on the Rule against double jeopardy. He also found fault with the very approach of the authorities such as it was. He told us that

if the disciplinary authority did not agree with the EO, then he should have recorded his reasons and allowed to the Applicant an opportunity of being heard. In short, he should have followed the law laid down by the Hon'ble Supreme Court in **Yoginath D. Bagde V/s. State of Maharashtra & Anr. (1999) 7 Supreme Court Cases 739.** According to the learned Advocate Shri Jagdale, this is a basic flaw in the case of the Respondents of which the Applicant must be given the benefit of. Mrs. K.S. Gaikwad, the learned P.O. on the other hand stoutly defended the order of the disciplinary authority, but her main contention was that the said order has been upheld by this very Tribunal in OA 659/2006 discussed above, and therefore, this controversy cannot be re-agitated.

8. Now, the order of this Tribunal in OA 659/2006 has become final conclusive and binding because it was not carried further to the Hon'ble High Court. In fact, the order of this Tribunal was complied with and a fresh enquiry was held. The Applicant participated therein. Now, on the first principles of law, therefore, this Bench of equivalent jurisdiction cannot question that judgment of this Tribunal nor can it take any view of the matter, which would be directly or indirectly, clearly or inferentially stand in contest therewith. The truism or otherwise of the case

of the Applicant tried to be made out before us in an academic and theoretical sense cannot persuade us to adopt a course of action that might tantamount to scrutinizing that order of the Tribunal which is *inter-partes* and has become conclusive and binding. The fact as to what view, we or either of us, would have taken, if we were deciding OA 659/2006 is completely irrelevant and this is not just on the ground of propriety or judicial discipline, but on plain legal principles. We must hasten to add that even the question of judicial discipline has in its own way a hue of legality and that should as far as this OA is concerned, in our view, reinforce our conclusions. In that view of the matter, therefore, having found that we are bound by the judgment in OA 659/2006, we have to restrict ourselves to the denovo enquiry, and therefore, this aspect of the matter so vigorously urged by Mr. Jagdale cannot be accepted, even as we may record our apprehension for the industry that has gone into this formulation made by the learned Advocate. Similarly, his reliance on **Kanailal Bera Vs. Union of India & others, (2008) 1 SCC (L & S) 63** is also not quite apposite because in the first place, the fact situation such as it obtained therein based on the Rules therein applicable was entirely different and the observations of Their Lordships in Para 6 which Mr. Jagdale commended for acceptance were in

context. In fact, as already mentioned herein, in the present set of facts, if the Applicant was so minded as to press this issue further, then he ought to have done so by carrying the matter before the Hon'ble High Court against the judgment of this Tribunal in the OA above referred to. His failure to do so has produced the results which by law cannot now be ignored or circumvented. Such a situation did not obtain in **Kanailal Bera** case (supra). Mr. Jagdale relied upon **Miss Eva Rout Vs. State of Orissa, AIR 1969 Orissa 293**. It was laid down therein that the principles of natural justice must be observed in such enquiries.

9. Now, even as we proceed to the *denovo* enquiry, we think it appropriate to clearly spell out the jurisdiction of this Tribunal in matters like this one. There are several binding judgments in the field and before us in this matter, reliance was placed on **Bank of India and Anr. Vs. Degala Suryanarayana (1999) 5 SCC 762 and Kailash Nath Gupta Vs. Enquiry Officer (R.K. Rai) Allahabad Bank and others (2003) 9 SCC 480**. The facts are bound to differ, but we can notice the legal principles that emanate from the authorities above referred to as well as several other authorities in the field. This judicial forum's jurisdiction in such matters is not an appellate one. It is a jurisdiction of judicial review of administrative action. The

delinquent is by no means an exact counter part of an accused of a criminal trial. The procedural details and rigidity with which a criminal trial or even a Civil Suit are heard under the codes of Criminal and Civil Procedure and Evidence Act, etc. are not applicable to the departmental enquiries (DEs). But then, that does not mean that anything and everything on a mere *ipse-dixi* of an employer could pass muster with the judicial scrutiny in such matters. In fact, the enquiry must be held in such a manner as to be just and fair and all aspects of the matter must be informed by the principles of natural justice. The degree of proof unlike a criminal trial is not of proof beyond reasonable doubt, but it is preponderance of probability. The judicial forum in matters like this, would be concerned more with the process of reaching the conclusion and if that process was proper and appropriate, then the conclusion drawn thereon by the authorities below will not matter much. The mere fact of the existence of a possibility of the different point of view on conclusion on same set of facts will not be sufficient to interfere with the impugned orders. That can be done by an appellate authority before whom the entire matter both as to facts and law gets what can be called re-opened for the purpose of evaluation and he can on the same set of facts for the reasons assigned arrived at a different conclusion. That

jurisdictional freedom may not be there in case of the forum exercising the jurisdiction of judicial review of administrative action. However, the Tribunal will still be in duty bound to make sure that the conclusions are based on some incriminating evidence and is not wholly substantive or arbitrary or moonshine. The same principle generally so speaking will be applicable in the matter of punishment. Normally, if the delinquent is a recipient of a fair and just treatment, then the authority has sufficient elbow room to decide upon the quantum of punishment and the judicial authority shall not rush into substituting it just for the asking. This then is the parameter which one must work within in such matters and in exercising the jurisdiction such as it is.

10. The report of the Enquiry Officer is there at Exh. 'K'. It is dated 21.2.2008 although in other orders, there may be some typing slip as far as this date is concerned, but then there is no dispute thereabout.

11. The EO has noted the gist of the heads of the charge and referred to the various persons by name and considered their case. He has examined every aspect of the matter in detail and while evaluating the evidence, he has taken special care to examine it in the context of the

stand of the Applicant. It is not necessary for us to read the detailed report in respect of the statements made before the EO. But we are quite satisfied that as to every aspect of the matter, he has applied his mind in the light of the case of the Presenting Officer as well the Applicant and drawn his conclusions, which exemplify that there was incriminating evidence. Although the evidentiary process which applies in case of Court matter are not applicable to the DEs. But, even then, as we find it, the EO has examined the matter in depth. Again even as we do not expect always that such reports and orders would have a sophistication of a judicial pronouncement, both as to the substance and form, but in this matter, the EO has come very close to achieving that goal.

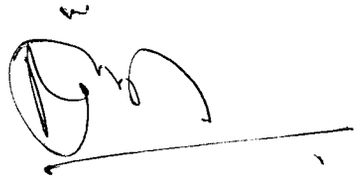
12. The above referred report of the EO came up for consideration by the disciplinary authority who by his order dated 21.2.2008 made an extremely detailed order noting each and every fact component and recorded his concurrence with the EO and found that the report was based on a proper appreciation, oral and documentary evidence and so saying, the Applicant came to be dismissed from service.

13. The above referred order of the disciplinary authority was carried in appeal before the appellate authority who by his order of 14.7.2008 dismissed the appeal finding no merit therein. In that order also, the appellate authority has properly applied his mind though his order is not so elaborate as the order of the disciplinary authority. But, as a matter of fact, it was not even necessary because the making of an order has got to be in accordance with the stage and the facts. Therefore, we are satisfied that the appellate order is also legally firm and good.

14. The order in revision dated 15.4.2011 is again an extremely elaborate and detailed one, which normally one may not expect from the revisional order because of the jurisdictional limitations of that authority. But be it as it may, even that order ultimately considered every aspect of the matter and held that the order of dismissal of the Applicant was proper.

15. Now, the above discussion would, therefore, make it very clear that within the parameter of jurisdiction to which a detailed reference has been already made above, we find that the Applicant was well treated at every stage of the DE. He was allowed opportunity to meet with the case

against him effectively and he avoided of every such opportunity. As far as the other aspect of the matter is concerned, the report of the EO and the orders of the authorities which found clearly based on the evidence on record. The conclusions drawn are fully in accordance with the circumstances emanating from the record and are such as to be quite reasonable, probable in facts and circumstances and in that sense immune from judicial interference. In so far as the question of punishment is concerned, Mr. Jagdale made a feeling reference to the predicament of his client and told us that in the given set of circumstances, at least the punishment be modified to that of compulsory retirement, so that the Applicant could become eligible for sustenance by way of pension, etc. We appreciate the concern of the learned Advocate for his client, but having perused the record quite carefully, we are constrained to hold that the conduct of the Applicant was such as not to make him deserving for any judicial indulgence or clemency. There was a clear element of him taking money for doing something which was no part of his duty. No doubt, the issue of punishment just like in a criminal trial in DEs also is quite vexed. Several facts and factors are required to be taken into consideration. One of them is that it must look like a punishment in the first place. Secondly, although one human being cannot be



held as an exhibit, but in the current day situation, the punishment should be such as to sound as a warning bell for those who might be similarly minded and in that sense deterrent. Although, it is equally true that this must also be tempered with mercy wherever possible because almost always such orders hit not just the delinquent but also his family. But again, having taken into consideration all aspects of the matter and despite the persuasive submissions of Shri Jagdale, we are afraid, we cannot accept his submissions, and therefore, ultimately as a consequence, the learned Presenting Officer Smt. Gaikwad will have carried the day.

16. For the foregoing, the Original Application is hereby dismissed with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
22.01.2016

Sd/-

(Rajiv Agarwal)
Vice-Chairman
22.01.2016

Mumbai
Date : 22.01.2016
Dictation taken by :
S.K. Wamanse.
E:\SANJAY WAMANSE\JUDGMENTS\2016\O.A.804.11.w.1.2016.doc