

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.834 OF 2016

DISTRICT : PUNE

Shri Kantilal D. Shaha.)
Age : 72 years, Retired Regional Dairy)
Development Officer, Dairy Development)
Department, Govt. of Maharashtra and)
Residing at Flat No.1, Fountainhead)
Apartment, Opp. Sangampress Apartment)
Near Karishma Complex, Kothrud,)
Pune 411 078.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Agriculture, Dairy Development &)
Fisheries Department, Mantralaya,)
Mumbai - 400 032.)
2. Maharashtra Public Service)
Commission, Through its Secretary,)
Having office at Bank of India Bldg,)
Dr. D.N. Road, Fort, Mumbai.)...**Respondents**

Mr. M.D. Lonkar, Advocate for Applicant.

Mr. K.B. Bhise, Presenting Officer for Respondents.



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

DATE : 01.02.2017

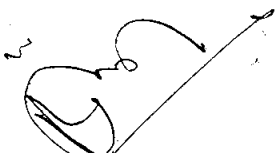
PER : R.B. MALIK (MEMBER-JUDICIAL)

JUDGMENT

1. This Original Application (OA) is presented by a retired Regional Dairy Development Officer, aged 72 years calling into question the imposition of an order of punishment in a disciplinary enquiry whereby a part of his pension was docked and in additional financial reparation to the Government was directed. That order by the disciplinary authority being the Government of Maharashtra was much diluted in appeal and both the orders are being questioned herein.

2. We have perused the record and proceedings and heard Mr. M.D. Lonkar, the learned Advocate for the Applicant and Mr. K.B. Bhise, the learned Presenting Officer (PO) for the Respondents.

3. The events giving rise hereto took place in early 1990s but the effect thereof is being still felt by the Applicant. The charge-sheet came to be issued to the Applicant on 16th October, 1997 by the Respondent No.1 –



Government of Maharashtra in Agriculture, Dairy Development and Fisheries Department which is at Exh. 'A' (Page 21 of the Paper Book (PB)). The Respondent No.2 is Maharashtra Public Service Commission (MPSC). The gravamen of the charge was that the Applicant while working as Gazetted Class-I Officer during 25.5.1992 and 3.7.1995 indulged in financial impropriety by placing orders without there being any written requisition and without following the prevalent practice, without there being any rate board and open tender. He further did it regardless of the stored material, the quality of the goods and without comparing it cost-wise with open market. He made unnecessary expenditure of Rs.5,51,293/- thereby causing a loss of Rs.9,82,597/-. As the Head of the Department, he committed breach of his duties and committed a misconduct in accordance with the provisions of Rule 3(1)(1) and (2) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (D & A Rules hereinafter). The documents that were relied upon were two, broadly so speaking viz. the report of the Chief Vigilance Officer and of Preliminary Enquiry Officer. The witnesses were Chief Vigilance Officer and Internal Audit Officer and also Mr. H.L. Pawar from the Audit Section.



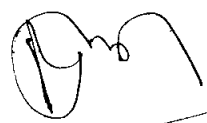
4. The Applicant submitted his explanation on 17.12.1997 and that was really a detailed one running into about 17/18 pages. Another explanation was submitted by him on 19.12.1997 and thereafter as well.

5. The Regional Enquiry Officer was appointed as Enquiry Officer (EO) and he on 25.7.2002 recorded the statement of Chief Vigilance Officer (Retired) Mr. M.K. Bhalerao. It needs to be noted that it would appear from the record that there were other delinquents also involved herein but still it appears that separate DEs were held. It is not clear as to what Mr. Bhalerao wanted to mention in the cross-examination because he mentioned therein that his remarks basically were on what Mr. N.P. Pagare, the Chief Security Officer, Miraj had submitted. It is not clear as to whether he did anything else because what he mentioned was, "मी कोणतीही अन्य चौकशी केली/नाही हे खरे आहे." The second witness examined by the EO was Mr. Pagare named above who was cross-examined on behalf of the Applicant. He made it clear that his report was based on hear-say. Nothing was informed to him in writing by anybody. He himself did not examine any document. He admitted quite candidly that his conclusions were only based on suspicion.



6. Mr. H.L. Pawar was the Accounts Officer, Internal Audit Examiner. He admitted that he had not recorded the statement of any employee. He did not ascertain if the purchases like the one in question were made by the other Regional Dairy Development Officers or not, what was the post that the Applicant was holding. He admitted that a prescribed proforma was given to the Officers and they had mentioned there as regards the requisition of the material. He thereafter gave several admissions to the minute details whereof, it may not be necessary to go to. In the further cross-examination of Shri Kharche, it would quite clearly appear that in a particular incidence, the rate per unit was not something for which the Applicant could possibly be accused of any impropriety. He admitted that at the time of preliminary enquiry, no opportunity was given to the concerned Officers or employees to place their side with regard to the purchases. But he had taken the opinion of S/S Virkar and Patil, the then Assistant Commissioner (quality control) and Assistant Commissioner, Dairy Development respectively.

7. We may, however, make it quite clear that even as we have perused the statements recorded at the time of the DE way back in the year 2002, but our jurisdiction is


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that of judicial review of administrative action which jurisdiction has its own limitations. In fact, earlier this very Bench had an occasion to decide another OA brought by this very Applicant being **OA 692/2015 (Shri Kantilal D. Shah Vs. State of Maharashtra and one another)**.

The parties were the same. There also, the Applicant was made to face a DE post retirement and in the manner of speaking, he succeeded in that OA. The question of the jurisdictional limitation of this forum came to be discussed by us relying upon another Judgment in the matter of **OA 1098/2015 (Mr. Rajendra W. Dhakad Vs. State of Maharashtra and 2 others)**. It will be appropriate in our view to reproduce Para 7 from the Applicant's earlier OA.

“7. Further, the normal principles that are applicable to such matters where the judicial forum scrutinizes the orders made below as a forum of judicial review of administrative action, there is a peculiarity of the expanse of jurisdiction. We had an occasion to deal with this aspect of the matter in several OAs and in one where the order is pronounced today itself, we had an occasion to deal with this aspect of the matter and it will be advantageous to note our observations from a part of Paras 11 and 12



of **OA 1098/2015 (Mr. Rajendra W. Dhakad Vs. The State of Maharashtra and 2 Ors.)**.

“11. We may now turn to the departmental enquiry aspect of the matter. It would appear from Page 35 of the P.B. (Exb. 'B') that the Regional Enquiry Officer Shri Chinchnikar was appointed as an Enquiry Officer (EO). Before we proceed to read to the extent necessary and permissible, the departmental enquiry proceedings, it will be appropriate to delineate to ourselves the scope of our own jurisdiction in dealing with the matters like the present one. Our jurisdiction is of a judicial forum that functions as a forum of judicial review of administrative action. It is not an appellate forum, and therefore, the latitude is that much narrower. The process and purity and accuracy of the process of reaching the conclusion rather than the conclusions themselves is the chief concern in such jurisdictions. That process must be informed by the principles of natural justice, *audi alteram partem*. The strict Rules of



Evidence such as enshrined in the Codes of Procedure and Indian Evidence Act with their rigors are inapplicable to the departmental proceedings, but still a delinquent must receive a treatment in accordance with the principles of natural justice and fair-play. In actual practice, he must be given an opportunity to defend himself both by way of testing by cross examination the witnesses against him and also leading positive evidence, if he was so inclined to do. The burden of proof in such matters on the employer is not like it is on the prosecution in a criminal trial of proof beyond reasonable doubt, but it is of preponderance of probability. The mere fact that the judicial personnel presiding over the judicial forum would have or have not reached the same conclusion as did the authorities would not be by itself sufficient for the judicial forum to act.

12. The judicial forum would make sure that there was some incriminating material to act in the manner that they did

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and if that incriminating material warranted the conclusions drawn by them to be drawn, then that would be something which would be accepted by the judicial forum and that precisely is the distinction between an appellate forum and the forum that exercises the jurisdiction of judicial review of administrative action. These principles apply in the matter of not only the determination of guilt, but also the imposition of penalty. In case of proved delinquency, the punishment will not be disproportionately harsher which might mock at the principles of natural justice and fair-play. This is the broad parameter which we must act within."

8. The crux of the matter, however, will be as to whether the EO in his extremely lengthy report, the Government as a disciplinary authority and the Hon'ble Minister as an appellate authority considered this evidence in the manner, they should have done it. It is no doubt true that if they had considered it, at least to a reasonable extent, then maybe we would not have rushed just to substitute our views for theirs but reading of the above

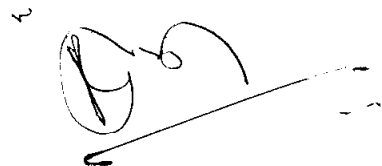
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referred reports will make it quite clear that they have not been able to explain the reasons as to why the circumstances that were favourable to the Applicant should not have been believed by them. The Government as disciplinary authority has not even in brief discussed the evidence. No doubt, the Government agreed with the EO. Just how much they should have expressed their views thereabout was in their domain, but what we find in the order of the disciplinary authority which is at Exh. 'R' (Page 270 of the PB) is that they have merely endorsed the conclusions of the EO without even in brief indicating their point of view with regard to whatever was in favour of the Applicant.

9. By the time, the order was made by the Government on 8.1.2015 and we may have something to say about the manner in which the enquiry proceeded post retirement in 2003 which would probably put the proverbial snail to shame. Here, however, we may mention that the punishment imposed was withholding of 10% of pension for two years and recovery of Rs.3,06,778/- from the Gratuity permanently with the balance being recovered at Rs.5,000/- p.m. in 17 installments. The above order of the Government was challenged in appeal (Exh. 'S', Page 272 of the PB). The Applicant made representations



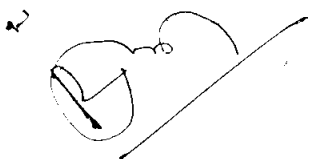
thereagainst and one of them was 7.11.2015 (Exh. 'V', Page 325 of the PB). In fact, there appears to be a trend in this OA, where the Applicant has been making one representation after another and on most of the occasions, there was overlapping of facts which are perhaps unavoidable and inevitable. Several issues were addressed by him and ultimately, the Hon'ble Minister of State for Water Resources and Water Conservation made the appellate order on 4.4.2016. We have already referred to some aspects of the matter hereinabove which even covers this appellate order. A point was consistently raised right from the day one way back in 1990s by the Applicant that he wanted to examine one Mr. Sawant who apparently had drawn conclusions with regard to the irregularities. It appears from the appellate order that the Department had its own views about the rejection of the request of the Applicant to examine Mr. Sawant. The appellate order sets out the points raised by the Applicant and controverted by the Department. A very brief reasoning is given in the appellate order indicating therein that it was not clear as to whether the entire purchase of all the articles were included in the detailed rate board. The entire information was not available. And then, in Para 8 (in Marathi), the following observations were made.

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“८. तथापि चौकशी अहवालामध्ये दोषारोपपत्रातील एकूण २६ वस्तू खरेदीबाबत अपीलकर्ता यांनी दिलेला खुलासा त्यावरील सादरकर्ता अधिकारी यांनी सादर केलेले मुद्दे विचारात घेऊन चौकशी अधिकारी यांनी दोषारोप सिध्दतेबाबत निष्कर्ष नोंदविले आहेत. त्यासंदर्भातील विवेचनावरून दिसून येते की सदर प्रकारणी अपीलकर्ता यांनी वस्तू खरेदी करताना रु.५०,०००/- च्या वरील खरेदीस दरपत्रीका न मागविणे, शसन निर्णय, उद्योग, उर्जा व कामगार विभाग, दिनांक २.१.१९९२ अन्वये विहीत केल्यानुसार वस्तूंची खरेदी न करणे, मागणी नसताना वस्तू खरेदी करणे इ. अनियमितता केल्या आहेत.”

He concluded that there was still a case to take disciplinary action, and therefore, in accordance with the provisions of Rule 27(1) of the Pension Rules, in exercise of powers under Rule 23(3) of the D & A Rules, he reduced the punishment quite substantially and ordered 5% p.m. deduction of pension for two years. This order is also being impugned herein.

10. Now, it is no doubt true that the appellate authority has substantially reduced the punishment as to its quantum but as we mentioned in effect in the earlier OA of the Applicant in a system which is governed by the law and rules, first of all, it must be conclusively determined that the public servant was guilty and then only can the issue of quantum of punishment be addressed. No doubt, the appellate authority has in effect reduced the sting of the punishment to a considerable extent, but still in our



opinion, there is no satisfactory discussion with regard to whether the guilt was proved in the first place. We have already pointed out the defects, if we might call it hereinabove in so far as the guilt determined is concerned. In the Affidavit-in-reply filed on behalf of the Government by Ms. Anita J. D'souza, Under Secretary in the office of Agriculture, Animal Husbandry, Dairy Development and Fisheries Department. Let us reproduce Para 5 in its entirety therefrom.

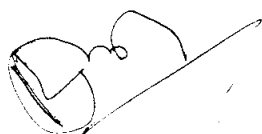
“5. With reference to Para 6.3, I say and submit that as it apparently seemed that there could be truth in the points raised by Applicant in his explanation dated 17.12.1997, remarks of Dairy Commissioner were called for with respect to the said explanation dated 17.12.1997. Copy of related note dtd. 5.1.1998 is annexed hereto and marked as EXHIBIT 'R-1'.”

It is further submitted that remarks submitted by Dairy Commissioner vide letter dated 23.2.1998 were considered and from facts stated therein (viz. that copy of preliminary report had been supplied to Applicant. The Applicant had submitted replies dated 20.04.1995, 03.05.1995, 26.06.1995. These were duly examined by then Additional Commissioner and he had concluded that

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irregularities had been committed in purchase of material) it was seen that the allegations of Applicant were baseless. Therefore Joint Enquiry was ordered into the matter. Copy of letter dated 23.2.1998 and related noting dtd. 11.3.1998 is annexed thereto and marked as EXHIBIT 'R-2'."

This then was the stand of the Government at the stage of the pleadings. Some kind of an explanation was sought to be offered for effective rejection of the request of the Applicant to examine Additional Commissioner – Mr. S.A. Sawant in Para 8 of the Affidavit-in-reply. The explanation apparently was that Mr. Sawant would be concerned with the matter for the earlier financial years viz. 1992-93 and 1993-94. What really happens is that whatever ought to have been satisfactorily explained by the EO, the disciplinary authority or the appellate authority is being sought to be explained in the Affidavit-in-reply by the said Under Secretary. In Para 19(16), it has in effect been mentioned that there were orders for closing the DE made in August, 2011. Taking all these aspects into consideration and finding no satisfactory explanation from the record with regard to the points raised by the Applicant, we are very firmly of the view that even within the constraints of jurisdiction, we will have to even interfere and not just intervene.



11. A separate compilation has been furnished by the Applicant pointing out the shortcoming and lacuna in the Preliminary Enquiry Report. We have perused them, but it is not necessary for us to discuss in detail each and every head thereof.

12. It is not necessary for us to repeat the various dates in the matter of delay in completing the DE even post retirement. The dates are self-explanatory and self-evident. There is absolutely no satisfactory explanation for any justification as it were for why it should have dragged on for so long. In fact, the factor of delay in this OA is something that on its own force is sufficient to hold for the Applicant.

13. Further, as already mentioned above, it was post retirement that the enquiry struggled on and on and the governing provision would be Rule 27 of the Pension Rules and not Rules 8 and 9 of the D & A Rules. If the enquiry had to continue even after retirement, it could, provided there was material on record to show that the point of the misconduct being grave was present in the mind of the employer, whether or not the specific words were used or not used. Mr. Lonkar, the learned Advocate for the Applicant referred us in that behalf to **D.V. Kapoor Vs.**



Union of India, 1990 SCC (L & S) 696. He also relied upon our Judgment in the earlier OA of this very Applicant.

14. Mr. Bhise, the learned PO relied upon an unreported Judgment of the Hon'ble Supreme Court in **Civil Appeal No.11975/2016 arising out of SLP (C) No.30710 of 2014 (Chief Executive Officer, Krishna District Cooperative Central Bank Limited and Another Vs. K. Hanumantha Rao and Another)**. Mr. Bhise relied upon this Judgment of the Hon'ble Supreme Court to highlight the fact that the jurisdictional limitations are such that we cannot just for the asking rush in to substitute our view about the adequacy of the quantum of punishment for the view adopted by the authorities. Now, the issue here is not so much of the quantum of punishment, as it is the establish of guilt itself and that is the undoing of the Respondents. In our view, a proper conclusion would be that the Respondents have failed to establish that the Applicant was guilty at all and this, we have made it clear that we are in a position to hold even within the constraints of our jurisdiction.

15. The upshot, therefore, is that both the impugned orders will have to be and they are hereby quashed and set



aside. The Applicant is exonerated from the allegations forming the charge herein. The deduction, if any, made from his pension or gratuity, shall be refunded to him within four weeks from today. The Original Application is allowed in these terms with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
01.02.2017

Sd/-

(Rajiv Agarwal)
Vice-Chairman
01.02.2017

Mumbai

Date : 01.02.2017

Dictation taken by :

S.K. Wamanse.

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