

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1780 OF 2015

SHRIRANG TRIMBAK SHELKE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

.....
Advocate for petitioner : Mr. K. C. Sant
AGP for respondents : Smt. S. A. Dhumal
.....

**CORAM : S. V. GANGAPURWALA AND
V. K. JADHAV, JJ.**

DATED : 23rd JULY, 2015

P.C. :-

1. Mr. Sant, the learned counsel for the petitioner submits that, the order of termination against the petitioner is *per se* illegal. The petitioner was working as Grade-C employee with the respondent. A departmental enquiry was conducted against the petitioner. The enquiry officer held the charges to be partly proved. However, the disciplinary authority, without any further evidence, held the charges to be proved. The learned counsel submits that eight witnesses were stated to be examined, however, only three witnesses were examined in the disciplinary proceedings. The allegations were that, the petitioner withdrew the amount from the accounts of three war widows. According to the learned counsel, the petitioner's case is that the petitioner was only assisting the said ladies in withdrawal of

amount. The allegation that the petitioner withdrew the said amount for his own purpose is erroneous and does not stand to any reason. Even a criminal case was filed against the petitioner. The petitioner is acquitted in the said criminal case. All the three ladies have stated that they have no complaint against the present petitioner. According to the learned counsel, the said aspect of acquittal in the criminal case ought to have been considered by the Tribunal, however, the same is not at all considered. The learned counsel submits that the criminal case and the departmental enquiry are based on the same charges. When acquittal has been granted in the criminal case, the same ought to have been considered by the Tribunal. The learned counsel submits that as the three ladies were not examined, the petitioner did not have the opportunity to cross-examine them so as to prove his case. The learned counsel submits that even the letter dated 30th May, 2000 allegedly written by the petitioner could not have been relied upon. The same was under coercion. The same could not have been considered as an evidence against the petitioner. The learned counsel further submits that the Tribunal has failed to re-appreciate the evidence which was led in the disciplinary proceedings while dealing with the Original Application. According to the learned counsel, the evidence of superior officer of the petitioner was a hearsay evidence. The same could not have been considered as primary evidence.

2. The learned AGP supports the impugned order passed by the Tribunal.

3. The Courts would only consider whether an appropriate procedure has been followed in conducting the departmental enquiry. It is a matter of record that the petitioner has participated in the enquiry. Witnesses have been cross-examined and the petitioner also has given his statement.

4. The show-cause notice was issued and the petitioner is terminated. The allegations against the petitioner were serious. The Tribunal has observed that the petitioner was himself an ex-serviceman and the department where the petitioner was working is such that he was to protect the interest of the ex-servicemen and their family. In the disciplinary proceedings, it has been observed that it is the petitioner who withdrew the amount. Even in the criminal case, the three ladies have given a statement that they have given the said amount as a hand loan to the present petitioner. The fact that the petitioner has withdrawn the said amount is writ large. Even the petitioner himself has admitted the said fact in his letter dated 30.05.2000 as is observed in the judgment delivered by the Tribunal. It is observed that the petitioner had indeed withdrawn the amount from the account of said ladies but latter squared the accounts. The

standard of proof in criminal case and departmental enquiry is different.

5. Considering the aforesaid aspects of the matter, we do not find any error committed by the Tribunal in passing the impugned order. The Writ petition as such, is dismissed. No costs.

(V. K. JADHAV, J.)

(S. V. GANGAPURWALA, J.)

vrel/