

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3989 OF 2003

Nanabhau Ukha Khairnar
Aged 37 years, Occ. Service,
resident of Loni (Bk.),
Taluka Amalner,
Dist. Jalgaon.

... Petitioner

Versus

1. The State of Maharashtra
(Copy to be served on the
Government Pleader, High Court
Bench at Aurangabad.)
2. Forest Development Corporation
of Maharashtra Limited,
6-A, Nawab Layout, Tilak Nagar,
Nagpur – 440 010.
Through its Chairman.
3. The Managing Director,
Forest Development Corporation
of Maharashtra Limited,
6-A, Nawab Layout, Tilak Nagar,
Nagpur – 440 010.
4. The Regional Manager,
Forest Development Corporation
of Maharashtra Limited,
Nasik Region, Nasik.
5. The Divisional Manager
Forest Development Corporation
of Maharashtra Limited,
Forest Project Division
East Nasik Division,
Nasik.
6. The Enquiry Officer &
Divisional Manager,

Forest Development Corporation
of Maharashtra Limited,
Forest Project Division,
Nandurbar Division,
District Nandurbar.

... Respondents

.....
Advocate for Petitioner : Mr. N B Suryawanshi
Advocate for Respondents : Mr. Pradeep L. Shahane
.....

**CORAM : A. V. NIRGUDE AND
V. K. JADHAV, JJ.**

DATED : 13th MARCH, 2015

JUDGMENT (PER V. K. JADHAV, J.) :-

1. The petitioner joined the services with Forest Development Corporation of Maharashtra Limited on 5.4.1988, as a Forest Guard. On 13.11.1995 the petitioner was transferred to Yawal Project Division. On 24.11.1995 he was served with a charge sheet and in pursuance to the said charge sheet, departmental enquiry was held by respondent No.6 against the petitioner. After completion of departmental enquiry, punishment was awarded by respondent No.5 to the petitioner whereby the petitioner was brought to his original pay scale with permanent effect, so also recovery of Rs.32,987/- was ordered against him and further the suspension period of the petitioner was also ordered to be treated as suspension period. Being aggrieved by the same, the petitioner had preferred appeal with respondent No.4 however; the same came to be rejected. The

petitioner had also preferred revision/appeal before respondent No.3, however, the same also came to be rejected for the reason that there is no remedy of appeal/revision. Hence, this writ petition.

2. Learned counsel for the petitioner, during the course of arguments, has restricted his arguments to the extent of punishment inflicted on the petitioner and more particularly the suspension period of the petitioner was ordered to be treated as suspension period by way of punishment. The learned counsel for the petitioner submits that the charge sheet was issued against the petitioner on 24.11.1995 and order of suspension came to be passed on 20.12.1995. The petitioner had submitted his reply to the charge sheet on 14.2.1996 i.e. within a period of three months from the date of service of charge sheet on him. Learned counsel thus submits that Enquiry Officer has submitted his report on 2.2.1999 stating therein that the charges levelled against the petitioner are proved and proposed the punishment. Learned counsel further submits that the Enquiry was belatedly completed for the reasons which are not attributable to the petitioner. Learned counsel also submits that there is no provision in the Forest Development Corporation Employees Conduct, Discipline and Appeal Rules that after employee being found guilty, the suspension period can be treated as punishment. The learned counsel repeatedly submits that the suspension period

of the petitioner was unduly prolonged for a period of 38 months and delay is not attributable to the petitioner at all. In view of this, the respondent authorities were not justified in treating the suspension period of the petitioner as suspension period. Learned counsel on this backdrop submits that because of this long and undue suspension period and bringing the petitioner to the basic pay scale, all his juniors have marched ahead of the petitioner by grant of five annual increments. The punishment imposed on the petitioner is unduly harsh and excessive and it has permanent effect on entire service career of the petitioner. Learned counsel therefore, lastly submits that the petition deserves to be allowed by setting aside the order treating the suspension period of the petitioner as suspension period by way of punishment.

The learned counsel for the petitioner in order to substantiate his contentions, has placed reliance on the judgment of the Supreme Court in the case of ***R.P.Kapur V. Union of Indian and another, reported in AIR 1964 SC 787.***

3. Learned counsel for the respondent authorities submits that on receipt of findings of Enquiry Officer the disciplinary authority of the Corporation had issued show cause notice to the petitioner asking him as to why his services should not be dismissed. The disciplinary

authority of Corporation on going through the reply of petitioner and after carefully considering the final defence statement, past service record, size of the family and number of dependent members of the petitioner, by taking lenient view in the matter reduced the proposed punishment of dismissal and accordingly awarded punishment of reduction of pay to basic pay with permanent effect alongwith recovery of certain amount to be paid in equal instalments and further the period of suspension is treated as suspension period. The learned counsel thus submits that the disciplinary authority has taken possible lenient view in the matter of punishment against the petitioner by exercising its discretionary powers and as such, the punishment as imposed is just, proper and legal considering the gravity of proved misconduct against the petitioner.

The learned counsel further submits that the petitioner has been given benefits of increments and revision in the salary from time to time as per the Rules. He has also been given benefit of assured career progress scheme upon his completing 12 years service on the same post. He was also promoted in the year 2012 as Forester and he is drawing salary as per his promotional post. The learned counsel further submits that the enquiry officer has taken prompt steps in the matter. In view of the Forest Development Corporation of Maharashtra Employees Conduct and Discipline

Rules, there is no time limit for disposal of enquiry. The learned counsel thus submits that considering seriousness and gravity of misconduct of the petitioner, it cannot be said that the enquiry Officer has not taken effective and prompt steps on each date. The petitioner has not raised such ground before the appellate authorities. There is no merit in the grounds raised by the petitioner. The learned counsel for the respondent authorities, in order to substantiate his contentions, placed reliance on the judgments in following cases :

- i) Panchmahal Vadodara Gramin Bank and Ors. Vs. reported in (2011) 15 SCC 310,
- ii) State Bank of Bikaner and Jaipur Vs. Nemi Chand Nalwaya reported in (2011) 4 SCC 584 and
- iii) Janatha Bazaar South Kanara Central Co-operative Wholesale Stores Ltd. & Others Vs. Secretary, Sahakari Noukarara Sangha & Others

4. On careful perusal of the Forest Development Corporation of Maharashtra Employees Conduct and Discipline Rules, it appears that if disciplinary proceeding against an employee is contemplated or is pending or where criminal proceedings against an employee is under investigation or trial, the disciplinary authority if satisfied that it

is necessary or desirable to place the employee under suspension, it may order in writing to suspend the employee w.e.f. such date as may be specified in the order. In the instant case on 24.11.1995 charge sheet was served on the petitioner and the petitioner was suspended by the disciplinary authority by issuing order in writing on 20.12.1995. Rule 3 of part II of the said Rules reads as under:-

“3.(a)Where a disciplinary proceeding against an employee is contemplated or is pending or where criminal proceedings against him in respect of any offence are under investigation or trial and the Disciplinary Authority is satisfied that it is necessary or desirable to place the employee under suspension, he may by order in writing, suspend him with effect from such date as may be specified in the order. A statement, setting out in detail the reasons for such suspension shall be supplied to the employee within a week from the date of suspension. If the Disciplinary Authority issuing order of suspension of the employee is not the Appointing Authority of the employee, the orders of suspension shall as soon as possible be communicated to the Appointing Authority.

(b) An employee who is placed under suspension under clause (a) shall be governed by the provision shown below:-

I. Subsistence allowance and compensatory allowances during suspension:

- (1) *An employee under suspension or deemed to have been placed under suspension by an order of the Appointing Authority shall be entitled to the following payments, namely :-*
- (a) *A subsistence allowance of an amount equal to the leave salary which an employee would have drawn if he had been on leave on half pay and in addition dearness allowance based on such leave salary.*

Provided that where the period of suspension exceeds three months, the Authority which made or is deemed to have made the order of suspension shall be competent to vary the amount of subsistence allowance for any period subsequent to the period of first three months as follows:-

- (i) *It may be increased by a suitable amount, not exceeding fifty percent of the subsistence allowance admissible during the period of first three months, if in the opinion of the said Authority, the period of suspension has been prolonged for reasons, to be recorded in writing, not directly attributable to the employee;*
- (ii) *It may be reduced by a suitable amount, not exceeding fifty percent of the subsistence allowance admissible during the period of the first three months, if in the opinion of the said Authority, the period of suspension has been prolonged due to reasons, to be recorded in writing, directly attributable to the employee;*
- (iii) *The rate of dearness allowance will be based on the increased or, as the case may be, the decreased*

amount of subsistence allowance admissible under sub-clause (i) and (ii) above.

(b) Other Compensatory allowances, if any, of which the employee was in receipt on the date of suspension to such extent and subject to such conditions as the Authority suspending the employee may direct;

Provided that the employee shall not be entitled to the compensatory allowances unless the said Authority is satisfied that the employees continues to meet the expenditure for which they are granted.

II. When an employee is convicted by a competent Court and sentenced to imprisonment, the subsistence allowance shall be reduced to a nominal amount of rupee one per month with effect from the date of such conviction and he shall continue to draw the same till the date of his removal or dismissal or re-instatement by the Competent Authority. If, however, he was acquitted by the Appellate Court in the meanwhile, in which case, he will draw the subsistence allowance at the normal rate from the date of acquittal by the Appellate Court."

5. It thus appears that the above said provision of suspension pending departmental enquiry is contemplated to facilitate the departmental enquiry if the disciplinary authority is satisfied that it is necessary or desirable to place the employee under suspension.

Here in this case, we do not find any criminal proceeding initiated against the petitioner. It thus appears from Rule 3 that the order of interim suspension could be passed against an employee while enquiry was pending into conduct by payment of subsistence allowance and compensatory allowance during the pendency period.

6. On careful perusal of Rule 2 of part I clause (d) and (e) of the said rules, it appears that major penalties are defined in clause (d) and minor punishment are defined in clause (e). The same are reproduced herein below:-

“2(d) “Major Penalties” means (i) dismissal (ii) removal from services which shall not be a disqualification for future employment under Corporation, (iii) compulsory retirement, (iv) reduction to a low time scale of pay, grade or post or service with or without effect on future promotion, seniority and pay and (v) reduction to a lower stage in the time-scale of pay with or without effect on future increments.+

(e) “Minor Punishment” means (i) censure (ii) withholding of promotion (iii) recovery from pay, whole or part of any pecuniary loss caused by employee to the Corporation by negligence or breach of orders, and (iv) withholding of increments of pay.”

7. While enquiry was pending into conduct of the employee,

interim suspension is required to be distinguished from suspension as punishment. There is no provision in the aforesaid Rules empowering the disciplinary authority to pass an order of suspension as punishment if the employee is found guilty of misconduct for which he was tried.

8. The Hon'ble Apex Court in the case of ***R.P. Kapur vs. Union of India and another (supra)*** relied upon by the learned counsel for the petitioner, in para 11 of the judgment has made following observations:-

11. The general principle therefore is that an employer can suspend an employee pending an enquiry into his conduct and the only question that can arise on such suspension will relate to the payment during the period of such suspension. If there is no express term in the contract relating to suspension and payment during such suspension or if there is no statutory provision in any law or rule, the employee is entitled to his full remuneration for the period of his interim suspension; on the other hand if there is a term in this respect in the contract or there is a provision in the statute or the rules framed thereunder providing for the scale of payment during suspension, the payment would be in accordance therewith. These general principles in our opinion apply with equal force in a case where the government is the employer and a public servant is the employee with the modification that in view of the peculiar structural hierarchy of Government, the employer

in the case of government, must be held to be the authority which has the power to appoint a public servant. On general principles therefore the authority entitled to appoint a public servant would be entitled to suspend him pending a departmental enquiry into his conduct or pending a criminal proceeding, which may eventually result in a departmental enquiry against him. This general principle is illustrated by the provision in Section 16 of the General Clauses Act, No. X of 1897, which lays down that where any Central Act or Regulation gives power of appointment that includes the power to suspend or dismiss unless a different intention appears. Though this provision does not directly apply in the present case, it is in consonance with the general law of master and servant. But what amount should be paid to the public servant during such suspension will depend upon the provisions of the statute or rule in that connection. If there is such a provision the payment during suspension will be in accordance therewith. But if there is no such provision, the public servant will be entitled to his full emoluments during the period of suspension. This suspension must be distinguished from suspension as a punishment which is a different matter altogether depending upon the rules in that behalf. On general principles therefore the Government, like any other employer, would have a right to suspend a public servant in one of two ways. It may suspend any public servant pending departmental enquiry or pending criminal proceedings; this may be called interim suspension. Or the Government may proceed to hold a departmental enquiry and after his being found guilty order suspension as a punishment if the rules so permit. This will

be suspension as a penalty. These general principles will apply to all public servants but they will naturally be subject to the provision of Art. 314 and this brings us to an investigation of what was the right of a member of the former Secretary of State's Services in the matter of suspension, whether as a penalty or otherwise."

9. In the instant case the aforesaid Rule does not permit to order suspension as punishment after the employee found guilty in the departmental enquiry conducted against him. Even assuming that such discretion lies with disciplinary authority or appellate authority, as the case may be, to treat the suspension period as a period not spent on duty after the employee found guilty on conclusion of the departmental enquiry, the facts of the case do not justify the impugned order to that extent on two counts, firstly the petitioner was brought on his basic pay scale with permanent effect and secondly the petitioner was served with charge sheet in the month of November, 1995 and though the petitioner had replied the charge sheet in the month of February, 1996, the Enquiry Officer came to be appointed in the month of July, 1996. In the year 1997, statements of only two witnesses on behalf of the department were recorded by Enquiry Officer. In the year 1998, remaining witnesses on behalf of the department came to be examined and in the month of February, 1999, the Enquiry Officer has submitted his report to the disciplinary

authority. Thus, the enquiry was concluded within a period of 38 months after serving charge sheet on the petitioner. We do not find anything on record and same is also not brought to our notice that reasons for delayed enquiry are attributable to the petitioner.

10. The learned counsel for the respondent authorities placed reliance on the judgment in the case of State Bank of Bikaner and Jaipur (supra) wherein the Hon'ble Apex Court has observed that the courts shall not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. In the case of Janatha Bazaar South Kanara Central Co-operative Wholesale Stores Ltd. (supra) the Hon'ble Apex Court held that the Court cannot substitute the penalty imposed by employer in case of serious misappropriation of amount. In case of Panchmahal Vadodara Gramin Bank and Ors. (supra) the Hon'ble Apex Court has observed that the High Court shall have no jurisdiction to interfere in the finding of the lower court in exercise of powers of judicial review under Article 226 of the Constitution of India. In the instance case, the suspension period of the petitioner is treated as suspension period as punishment without any specific provision in the Rules. In our opinion, the facts and circumstances of the present case are altogether different.

11. However, considering the gravity of proved misconduct against the petitioner, we are not inclined to disturb the order awarding punishment to the petitioner. We are, however, inclined to reduce the period of suspension till 31.12.1996 only. However, the petitioner is not entitled to claim any salary from the period between 1.1.1997 till he actually started working on 25.6.1999.

12. In the result, the impugned order awarding punishment to the petitioner shall remain undisturbed. In so far as para 3 of operative part of the order is concerned, the period of suspension is reduced to 31.12.1996. It is further directed to treat that the petitioner has taken charge of his post on 1.1.1997. The petitioner shall not claim any salary for the period between 1.1.1997 till he actually started working on 25.6.1999. Rule made absolute in the above terms.

13. In the facts and circumstances, there shall be no order as to costs.

(V. K. JADHAV, J.)

(A. V. NIRGUDE, J.)

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