

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10057 OF 2014

Ramakant s/o Prabhakar Rao Joshi

Age- 40 Years, Occu.: Service,

R/o. Kopargaon, Tq. Kopargaon,

District Ahmednagar.

... PETITIONER

VERSUS

1. The Principle District & Sessions Judge
& Disciplinary Authority at Ahmednagar.

2. The Enquiry Officer &
Civil Judge, Senior Division,
Kopargaon, District Ahmednagar,
(Shri V.A. Patil).

3. The Office Superintendent &
Presenting Officer
Shri B.G.Pardeshi,
Civil Judge, Senior Division,
Kopargaon, Dist. Ahmednagar.

... RESPONDENTS

Mr. M.D. Narwadkar, Advocate for Petitioner;

Mr. R.J. Godbole, Advocate for Respondents No. 1 to 3

CORAM : S.S. Shinde and P.R. Bora, JJ.

RESERVED ON : 06th April, 2015

PRONOUNCED ON : 09th April, 2015

JUDGMENT: (Per : P.R. Bora, J.)

1) Heard. Rule. Rule made returnable forthwith, with the consent of the parties.

2) Order dated 30.10.2014 passed by the Enquiry Officer in Departmental Enquiry No.06/2014, initiated against the present Petitioner, who is working as a peon on the establishment of Respondent No.1, is questioned by him in the present Petition. Petitioner is presently under suspension and facing the departmental enquiry.

3) In the aforesaid Departmental Enquiry, the presenting Officer filed an application on 30.10.2014 praying for the permission to examine some more witnesses and has also prayed for issuance of witness summonses in the names of the said witnesses. The said application was opposed by the present Petitioner. Petitioner submitted his objection in writing. It is his contention that, once the disciplinary authority has closed its evidence and the matter has proceeded further to the stage of recording the statement of the delinquent under Rule 8(20) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (herein after referred to as 'Rules of 1979'), the

disciplinary authority cannot be permitted to produce any new evidence and/or examine the witness whose name has not been mentioned in the original witness list. The learned Enquiry Officer has allowed the said application stating that, no prejudice will be caused to the delinquent even if the disciplinary authority is allowed to examine some more witnesses since the delinquent will be getting an opportunity to cross-examine the said witnesses. Aggrieved by the said order, the Petitioner has filed the present Petition.

4) Mr. M.D. Narwadkar, learned Counsel appearing for the Petitioner, inviting our attention to Rule 8(17) of Rules of 1979, submitted that, once disciplinary authority has closed its evidence and the enquiry has proceeded further to the stage of recording the statement of the delinquent under Rule 8(20) of the Rules of 1979, the disciplinary authority cannot be permitted to bring on record any further evidence. The learned Counsel submitted that, the names of the witnesses sought to be examined were not included in the original list of witness supplied to the Petitioner and therefore also the application was liable to be rejected. The learned Counsel further submitted that, since there are several lacunas in the evidence already produced, an attempt has been made by the disciplinary

authority to fill up the said lacuna by filing such application seeking permission to examine some more witnesses who were originally not cited as the witnesses. The learned Counsel submitted that, the statement of the Petitioner has already been recorded under section 8(20) of the Rules of 1979, and in such circumstances, if the disciplinary authority is permitted to bring on record some more evidence and to examine the witnesses, grave prejudice will be caused to the Petitioner. He therefore prayed for setting aside the order dated 30.10.2014 passed by the Enquiry Officer.

5) Mr. R.J. Godbole, learned Counsel appearing for the Respondents opposed the submissions advanced on behalf of the Petitioner. The learned Counsel submitted that, the Petitioner is misconstruing Rule 8(17) of Rules of 1979. The learned Counsel further submitted that, no prejudice is likely to be caused to the Petitioner because of the permission granted by the Enquiry Officer to the disciplinary authority to examine some more witnesses. The learned Counsel submitted that, the Petitioner will have equal opportunity to cross-examine the said witnesses and will also have an opportunity to adduce the rebuttal evidence if any. The learned Counsel further submitted that, the notices time to time given to the delinquent, copies of

which are already there on record and now sought to be proved by the disciplinary authority by examining the relevant witnesses are well within the knowledge of the Petitioner and it therefore cannot be said that any absolute new material is attempted to be brought on record. The learned Counsel further submitted that, there is no meaning in the allegation made by the Petitioner that, by examining the new witness, the Department is trying to fill-up the lacuna.

6) The learned Counsel relied upon the Judgment of the Hon'ble Supreme Court in the case of State of Mysore Vs. S.S. Makapure AIR 1963 SC 375 to urge that the departmental proceedings not being the Court proceedings, no strict rules of evidence can be applied to the said proceedings. The learned Counsel therefore prayed for dismissal of the petition.

7) We have consciously heard the submissions made on behalf of the respective Counsel of the parties. We have gone through the material on record. Since the emphasis of the Petitioner is on Rule 8(17) of Rules of 1979, we find it necessary to reproduce the said Rule, which read thus:

"8(17). *If it shall appear necessary before the close of the case on behalf of the disciplinary authority, the inquiring authority may, in its*

discretion, allow the Presenting Officer to produce evidence not included in the list given to the Government servant or may itself call for new evidence or recall and the re-examine any witness and in such case the Government servant shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned. The inquiring authority shall give the Government servant an opportunity of inspecting such documents before they are taken on the record. The inquiring authority may also allow the Government servant to produce new evidence, if it is of the opinion that the production of such evidence is necessary in the interest of justice:

Provided that no new evidence shall be permitted or called for or any witness shall be recalled to fill up any gap in the evidence unless there is an inherent lacuna or defect in the evidence which has been produced originally.

- 8) On careful perusal of the aforesaid Rule, we do not find that it in any way preclude the Presenting Officer from seeking permission and the inquiring authority from granting such permission to examine any new witness after close of the evidence whose name has not been mentioned in the witness list supplied to the delinquent employee. As provided under

Rule 8(17) of the Rules of 1979, all the evidence to be adduced by the disciplinary authority has to be ordinarily adduced before it closes its evidence even after close of the evidence by disciplinary authority, however it does not operate as an absolute bar for examining any more witness or producing on record the further evidence if later on it is noticed by the disciplinary authority that some cogent and necessary evidence has remained to be adduced in order to prove the charges levelled against the delinquent employee.

9) In fact, Rule 8(17) is an enabling provision which vests the inquiring authority with the discretionary power of allowing the Presenting Officer to produce evidence not included in the list given to the Government servant. It further provides that, in appropriate cases, the inquiring authority may itself call for new evidence or recall and re-examine any witness. Moreover, it also provides necessary safeguards to protect the interest of the Government servant, in the event of production of any such new evidence on behalf of the disciplinary authority which is not included in the list given to the Government servant, by making the further provision that, the Government servant shall be entitled to have, if he demands the copy of the list of further evidence proposed to be

produced and an adjournment of the inquiry for three clear days before the production of such new evidence. It further provides that, the inquiring authority shall give the Government servant an opportunity of inspecting such documents before they are taken on record. It also provides that, the inquiring authority may also allow the Government servant to produce new evidence, if it is of the opinion that the production of such evidence is necessary in the interest of justice. Proviso to the said Rule provides that, no new evidence shall be permitted or called for or any witness shall be recalled to fill up any gap in the evidence unless there is an inherent lacuna or defect in the evidence which has been produced originally.

10) Thus, no prejudice is likely to be caused to the Petitioner because of the permission granted by the inquiring authority to the Presenting Officer to examine some more witnesses, not included in the list given to the Petitioner though earlier the disciplinary authority might have closed its evidence. As has been rightly pointed out by the learned Counsel for the Respondents, no such evidence is going to be produced by disciplinary authority because of which the Petitioner will be taken by surprise. Next, no such case is made out by the Petitioner either in the Petition or during the course of the

arguments, so as to convince us that, the new witnesses are being examined to fill up lacuna or bridge the gaps in the evidence earlier adduced. As has been submitted in the affidavit in reply filed on behalf of the Respondents, it was incumbent on part of the Petitioner to expressly and in clear terms plead as to what sort and nature of gap in the evidence is left by the disciplinary authority, which it intends to fill up by examining the witnesses not mentioned in the original list of the witnesses. The Petitioner has not brought on record any such material.

11) Next, although the statement of the Petitioner has been recorded as per the provisions of Rule 8(20) of Rules of 1979, on perusal of the said statement it is noticed that it is a mere denial of the facts stated by the witnesses examined by the disciplinary authority. Since the Petitioner has not raised any specific defence in his statement under Rule 8(20), he cannot complain that the additional new evidence is sought to be adduced to frustrate or to defeat the defence so taken by him.

12) Lastly, it has to be stated that, the Inquiring Officer being a quasi judicial functionary is not bound by the strict

rules of evidence as held by the Hon'ble Supreme Court in the case of State of Mysore Vs. S.S. Makapure (cited supra). As has been contended in the affidavit in reply filed by the Respondents, the only obligation the law casts on the inquiring authority is that, it should not act arbitrarily or in violation of principle of natural justice.

13) For the reasons stated above, we do not find that, the Inquiring Authority has committed any error in allowing the request of the Presenting Officer to examine some more witnesses after close of the evidence. We reiterate that, no prejudice is likely to be caused to the Petitioner, since he will have full opportunity to cross-examine the witnesses proposed to be examined and he is also at liberty to examine his new witness if, he finds it necessary to rebut the evidence which may be adduced by the disciplinary authority. We, therefore, do not find any substance in the Petition so filed. It deserves to be dismissed and is accordingly dismissed. Rule discharged. No orders as to costs.

**P.R. Bora,
Judge**

**S.S. Shinde,
Judge**