

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 10175 OF 2015

Pravin Jagannathrao Andole .. Petitioner

Versus

The Disciplinary Authority and
Principal District and Sessions
Judge Parbhani and another .. Respondents

Shri Sachin S. Deshmukh, Advocate for the Petitioner.
Shri R. J. Godbole, Advocate for Respondent Nos. 1 and 2.

**CORAM : S. V. GANGAPURWALA AND
K. L. WADANE, JJ.
DATE : 30TH NOVEMBER, 2016.**

PER COURT :

. Departmental Enquiry is initiated against the petitioner. Prior to the departmental enquiry, preliminary enquiry was held. The grievance of the petitioner is that, at the time of preliminary enquiry proper opportunity is not afforded. On the said count the departmental proceedings/enquiry is assailed in the present writ petition.

2. Mr. Deshmukh, the learned counsel for the petitioner strenuously contends that, in fact, one Departmental Enquiry No. 04/2008 was held against Mr. Wavle. The enquiry officer of

the said enquiry exonerated the delinquent Mr. Wavle and leveled charges of fabricating false record and implicated the present petitioner. The said clause of the enquiry report was assailed by the present petitioner by filing Writ Petition No. 7790 of 2009. This Court after hearing the parties quashed and set aside the said clause implicating the present petitioner. This Court granted liberty to the Disciplinary Authority to consider the matter afresh.

3. The learned counsel further submits that, thereafter, the preliminary enquiry has been initiated and the respondent No. 2 is appointed as Enquiry Officer. During the preliminary enquiry, the petitioner sought copies of the application and the order thereon, which was relevant and material. The petitioner also sought time to file detailed affidavit in order to put forth his say. However, Presiding Officer/Enquiry Officer refused to grant any time to the present petitioner, nor provided copies of the application and the order as sought by the petitioner. The learned counsel submits that, the preliminary enquiry is basis for conducting departmental enquiry. At the time of conducting preliminary enquiry, the petitioner, if, would have been given reasonable opportunity, he would have been in a position to point out his defence properly and further consequences of the departmental enquiry could have been avoided. However, on the count of non grant of reasonable opportunity to the petitioner

and the documents, there is an infringement of legal right of the petitioner, so also violation of principles of natural justice. The learned counsel relies on the judgment of the Apex Court in a case of **Managing Director ECIL Hyderabad and others Vs. B. Karunakaran and others** reported in (1994) 4 SCC 727.

4. The learned counsel further submits that, the order passed by the Enquiry Officer is verbatim the same as was passed by the enquiry officer in an enquiry against Mr. Wavle in which the present petitioner was indicted. The learned counsel submits that, same is bad in law on account of principle of order by dictation. The learned counsel relies on the judgment of the Apex Court in the case of **Commissioner of Police Bombay Vs. Govardhandas Bhanji** reported in AIR 1952 SC 16 (1). The learned counsel further relies on the following judgments of the Apex Court.

- i) **Jagdish Prasad Saxena Vs. State of Madhya Bharat** reported in AIR 1961 SC 1070.
- ii) **The State of Punjab Vs. Bhagatram** reported (1975) 1 SCC 155.
- iii) **Kashinath Dikshita Vs. Union of India and others** reported in (1986) 3 SCC 229.
- iv) **Kumaon Mandal Vikas Nigam Ltd. Vs. Girja Shankar Pant and others** reported in (2001) 1 SCC 182.

to substantiate his contention that it is mandatory to give the copies of the documents asked by the delinquent and in absence thereof, enquiry stands vitiated. According to the learned counsel, the enquiry officer is bound by the doctrine of fairness. The doctrine of natural justice is synonymous with the fairness. Any act detrimental to the same would vitiate any adverse order against the delinquent. The learned counsel submits that, when the preliminary enquiry, itself is flawed by the non adherence to principles of natural justice, no propriety would be served in proceeding with the departmental enquiry. The learned counsel submits that, the said aspect would be open for judicial review.

05. Mr. Godbole, the learned counsel for respondent Nos. 1 and 2 submits that, it is not a case of no opportunity being granted to the petitioner. The principles of natural justice are followed. The enquiry which was initiated was a preliminary fact finding enquiry and it was not necessary to provide documents or information to the present petitioner. The said order is not under dictation. The report was submitted for suitable orders to be passed by the disciplinary authority as it deems fit. The allegations made in the application dated 19.12.2006 by Mr. Wavle were to be probed into at the time of preliminary enquiry. It was thought fit not to provide any copy of the said application. At the time of departmental enquiry, the petitioner will have all

reasonable opportunity. The petitioner had submitted application seeking time to submit his say to the show cause notice. At that time he had not asked for making the record available. The petitioner was supplied ten documents including copy of application of Mr. Wavle dated 19.12.2006. Along with charge sheet also copy of said application is furnished to the petitioner on 29.03.2012. On 18.04.2008 report of preliminary enquiry was received. According to the learned counsel, no illegality has been committed.

6. There cannot be any dispute with the proposition that, in a departmental enquiry, the delinquent is required to be afforded with reasonable opportunity and the documents on which reliance is placed by either of the parties.

7. It will have to be borne in mind that the grievance of the petitioner is with regard to non providing the documents at the time of preliminary fact finding enquiry. The said preliminary fact finding enquiry could have been conducted ex-parte also. On the basis of said preliminary enquiry no liability is fastened on the petitioner. The petitioner is not to be held guilty, nor any liability is to be fastened, nor punishment is to be imposed upon the petitioner on the basis of an enquiry report received, pursuant to the of preliminary fact finding enquiry. In the departmental enquiry proceedings initiated subsequent to the

preliminary enquiry, naturally the petitioner will have every right to get the copies of the documents and file his say and put forth his defence. At the time of departmental enquiry, the petitioner can always put forth his defence in detail based on the documents and also can adduce evidence. As no consequences would follow, on the basis of preliminary enquiry and it is merely a fact finding enquiry at the end of the employer, we do not feel that the grievance made by the petitioner at the time of preliminary enquiry would vitiate the departmental enquiry initiated against the petitioner. The principles of natural justice to be followed at the time of departmental enquiry would be on higher pedestal than what is required to be adhered to at the time of preliminary enquiry. Upon going through the judgments relied upon by Mr. Deshmukh, the learned counsel for the petitioner, it transpires that, the same are with regard to adhering to the principles of natural justice and making available the copies of documents on which reliance is placed at the time of departmental enquiry.

8. The enquiry report is placed before the disciplinary authority with the remark that the disciplinary authority would take decision as it deems fit and same would not tantamount to an order under dictation.

9. Considering aforesaid conspectus of the matter, we are not

inclined to set aside the departmental enquiry initiated against the petitioner on the ground that at the time of preliminary enquiry some document was not made available to the petitioner as contended by the petitioner. The writ petition accordingly is disposed of with aforesaid observations. No costs.

[K. L. WADANE, J.]

[S. V. GANGAPURWALA, J.]

bsb/Nov. 16