

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 33 OF 2016

Shri Shivprasad S. Naik,
major of age, Indian National,
r/o H.No.9/13/2, Parijat Co-operative
Housing Society,
Khadpabandh, Ponda Goa. 403 401.

.... Petitioner

V e r s u s

1. State of Goa,
through its Chief Secretary,
having office at Secretariat,
Porvorim Goa.
2. The Director (Vigilance) & Ex-Officio Addl.
Secretary to the Government,
Directorate of Vigilance, Serra Building,
Near All India Radio, Altinho,
Panaji Goa.
3. Directorate of Panchayats,
through its Director,
Government of Goa,
Junta House,
Panaji Goa.
4. The Under Secretary,
(Personnel)
having office at Secretariat,
Porvorim Goa.
5. The Director,
Directorate of Accounts,
Government of Goa,
Panaji Goa.

..... Respondents

Mr. N. Sardesai, Senior Advocate with Mr. L. Raghunandan, Advocate for
the petitioner.

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Mr. S. D. Lotlikar, Advocate General with Mr. Sagar Dhargalkar, Addl. Government Advocate for the respondents.

**Coram:- F. M. REIS &
NUTAN D. SARDESSAI, JJ.**

Date:- 13th October, 2016

ORAL JUDGMENT (Per F. M. Reis, J)

Heard Mr. N. Sardesai, learned Senior Counsel appearing for the petitioner and Mr. S. D. Lotlikar, learned Advocate General appearing for the respondents.

2. The above petition inter alia seeks to set aside the order dated 06.10.2015 and to order the reinstatement of the petitioner with full back wages and other consequential benefits.

3. Briefly, the facts of the case are that on 07.07.2004, an order was issued by the Under Secretary on the recommendations of the GPSC appointing the petitioner to the post of Block Development Officer. Thereafter, on 10.09.2008, the Additional Director (Vigilance) had issued an order under Rule 18(1) and (2) of the CCS Appeal Rules that the Government of Goa directed disciplinary action against two officers including the petitioner in common proceedings and that the Governor of Goa functions as a disciplinary authority. Subsequently, a Memorandum was

issued on 10.09.2008 that the Governor proposed to hold an inquiry against the petitioner under Rule 14 of the Appeal Rules. The Memorandum along with four annexures including the Articles of Charge and statement of imputation of misconduct were submitted to the petitioner. Four charges were framed against the petitioner as regards the shifting of the alignment of work and recording in the measurement book. The petitioner thereafter filed his reply somewhere in September, 2008 and contended that the applicable Circulars and past practice were followed by the petitioner and the petitioner had power to permit such shifting of alignment. It is further contended that the work was in fact completed but partly on a different location. The Presenting Officer filed his submissions in support of the Inquiry Proceedings to sustain the charges. The petitioner also filed written submission and produced certain documents. In the meanwhile, on 28.10.2009, the petitioner was confirmed in the Grade of Block Development Officer after satisfactory completion of the probation period. The Inquiry Officer appointed by the respondent submitted the inquiry report to the disciplinary authority holding that the charges stood proved. It is contended by the petitioner that the inquiry report is illegal as it was passed ignoring the admissions by the Department witnesses and the material on record. The petitioner thereafter filed a representation to the Additional Director (Vigilance) against the inquiry report on 17.08.2010. Somewhere in 2012 in some other proceedings against the petitioner, was served with a suspension order. Subsequently,

somewhere in May, 2012 the petitioner was served with a show cause notice as to why major penalty of dismissal from service should not be imposed on the petitioner. A reply was filed by the petitioner to the said show cause notice and by the impugned order dated 06.10.2015 passed by the respondent no.2 concluding that the petitioner is guilty of misconduct and holding that in public interest the petitioner deserves imposition of a major penalty of dismissal from service. Being aggrieved by the said order, the petitioner has filed the present petition.

4 The respondent filed affidavit in reply inter alia contending that the petitioner has been dismissed from service by the disciplinary authority having committed irregularities in the work of reconstruction of a road from Mr. Atmaram Tirodkar's house to Mr. Pelvan Salgaonkar's house at Madel. It is further contended that the petitioner was also charged to have committed irregularities in the work of improvement and asphaltting of road from Silvano D'Souza's house to St. Rock Chapel at Khoddai, V. P. of Thivim. It is also contended that the petitioner was also charged for irregularities in the work of reconstruction of the road and gutter from Estafania D'Souza to Filomena Menezes house at Madel. It is further pointed out that looking into the nature of misconduct which is serious in nature and keeping in view the said Government Policy of Zero Tolerance on Corruption and that of good governance a view was taken that it is not possible to continue inflicting the

charged officers on the citizens of the State. It is also contended that the petitioner has an effectual alternate remedy in the form of appeal under Article 24, Revision under Rule 29 and a review under Rule 29A of CCS (CCA) Rules, 1965. The allegations made in the petition have been disputed by the said respondents and it is further pointed out that the four charges were framed against the petitioner and that if one peruses the charge sheet issued to the petitioner, it is evident that the charges are specifically mentioned therein and further that upon conducting an inquiry into the matter, the charges are established. It is further pointed out that the disciplinary authority has decided to impose major penalty of dismissal from service on 31.07.2013 and after concurrence from the GPSC by a letter dated 12.09.2013, the decision of the disciplinary authority for dismissal was taken on 31.07.2013 and conveyed vide order dated 06.10.2015. It is also pointed out that the Section Officer was also dismissed by the said order who has in fact challenged the said order before the Governor. It is also pointed out that the order passed by the respondent no.2 under Rule 11 has been passed based on the decision taken by the disciplinary authority i.e. the Chief Minister and, therefore, the petitioner has a remedy of filing an appeal. As such, it is submitted that the petitioner is not entitled for the reliefs sought in the above petition.

5. Mr. N. Sardesai, learned Senior Counsel appearing for the

petitioner has pointed out that the Governor was a disciplinary authority and that the decision to impose punishment had to be taken by such disciplinary authority. The learned Senior Counsel thereafter has taken us through the impugned decision taken imposing punishment on the petitioner to point out that such authority was not empowered to take such decision when the Governor was appointed as a disciplinary authority. It is further submitted that even on perusal of the decision taken by the Chief Minister though there are no allegations of corruption against the petitioner in the charges framed against the petitioner nevertheless, the only ground to pass such order of dismissal to impose a major penalty was on account of Zero Tolerance to Corruption. It is further submitted that the allegations made are on account of diversion of road at the instance of the Local Panchayat which was ratified post facto when it was brought to the notice of the concerned Department. It is further submitted that the fact that the work was in fact been completed has not been disputed and in fact by resorting to such exercise the observations in the minute book suggest that there was a benefit to the public exchequer. The learned Senior Counsel further submitted that as the Governor was the disciplinary authority, the question of filing an appeal before the Governor challenging the impugned order is unsustainable in law. It is further submitted that by appointing the Governor as a disciplinary authority, the petitioner has lost his right of appeal and considering as the Chief Minister was not the disciplinary authority in the present case, the

impugned order deserves to be quashed and set aside. It is further pointed out that as the records reveal that subsequently the work permitted by the petitioner has been duly ratified, the question of imposing a major penalty of dismissal is wholly unsustainable. The learned Senior Counsel has thereafter taken us through the relevant clause to point out that the petitioner is entitled for the reliefs sought in the petition. In support of his submissions, the learned Senior Counsel has relied upon the judgment of the Apex Court reported in 2012(4) SCC 407 in the case of **Ravi Yashwant Bhoir V/s The Collector, District Raigad and others**. The learned Senior Counsel further submits that remanding the matter to the disciplinary authority would not at all be justified and as such, according to him this Court may examine the validity of the Inquiry Report submitted by the Inquiry Officer which led to the passing of the impugned order. The learned Senior Counsel further pointed out that even assuming the charges are proved, the major penalty imposed is shockingly disproportionate to the allegations made against the petitioner.

6. On the other hand, Mr. S. D. Lotlikar, learned Advocate General has pointed out that though it cannot be disputed that the disciplinary authority was the Governor and that the punishment should have been recommended by the Governor, in the present case, there is no prejudice to the petitioner who has been dismissed. The learned Advocate General

pointed out that considering the petitioner was a BDO, the disciplinary authority in terms of the said CCS (CCA) Rules, 1965 had to be the Chief Minister. The learned Advocate General further pointed out that the other officer has already filed an appeal before the Governor and any decision taken by this Court would gravely prejudice the stand of the petitioner. The learned Advocate General further pointed out that as such the question of showing any indulgence to the petitioner is wholly justifiable. The learned Advocate General further pointed out that as the petitioner has committed the grave irregularities, the question of continuing the petitioner in service would be wholly not justified and as such the major penalty imposed in the present case cannot be faulted.

7. We have considered the submissions of the learned counsel and we have also gone through the records. It is not disputed that the Governor has acted as a disciplinary authority in the present proceedings. In fact, in terms of Rules 23 and 24 of the CCS(CCA) Rules, the Governor is an Appellate Authority and as such right of appeal reserved for the petitioner has been taken away in the facts of the present case. It is also to be noted that the Chief Minister was not the disciplinary authority in the present case, as the order dated 10.09.2008 clearly records at para 3 thus :

“(i).....

(ii) that the Governor of Goa shall function as the

Disciplinary Authority for the purpose of the common proceeding and shall be competent to impose the penalties as specified in Rule 11 of the CCS (CCA) Rules, 1965.

(iii)”

8. In such circumstances, the impugned order stands vitiated as it has not been passed by the disciplinary authority constituted in the present matter. On this ground alone, the impugned order deserves to be quashed and set aside.

9. The main grievance of the petitioner in such circumstances is that as the Appellate Authority is the disciplinary authority, the petitioner would lose right of appeal against any decision taken by the disciplinary authority. But however, the Apex Court in the judgment reported in **(1997) 3 SCC 371** in the case of **Balbir Chand V/s Food Corporation of India Ltd., and Others**, has observed at para 3 thus :

“3. The learned counsel for the petitioner has raised the contention that since the petitioner was required to be dismissed by the disciplinary authority, namely, Zonal Manager, who alone is competent to remove him, the order of dismissal passed by the Managing Director is bad in law. In support

thereof, he placed reliance on a judgment of this Court in Surjit Ghosh vs. Chairman & Managing Director, United Commercial Bank. It is an admitted position that as a joint enquiry was conducted against all the delinquent officials, the highest in the hierarchy of competent authority who could take disciplinary action against the delinquents was none other than the Managing Director of the Corporation. In normal circumstances where the Managing Director being the appellate authority should not pass the order of punishment so as to enable the delinquent employee to avail of right of appeal. It is now well settled legal position that an authority lower than the appointing authority cannot take any decision in the matter of disciplinary action. But there is no prohibition in law that the higher authority should not take decision or impose the penalty as the primary authority in the matter of disciplinary action. On that basis, it cannot be said that there will be discrimination violating Article 14 of the Constitution or causing material prejudice. In the judgment relied on by the counsel, it would appear that in the Rules, officer lower in hierarchy was the disciplinary authority but the appellant authority had passed the

order removing the officer from service. Thereby, appellate remedy provided under the Rules was denied. In those circumstances, this Court opined that it caused prejudice to the delinquent as he would have otherwise availed of the appellate remedy and his right to consider his case by an appellate authority on question of fact was not available. But it cannot be laid as a rule of law that in all circumstances the higher authority should consider and decide the case imposing penalty as a primary authority under the Rules. In this case, a right of second appeal/revision also was provided to the Board. In fact, appeal was preferred to the Board. The Board elaborately considered the matter through the Chairman. It is not violative of Article 14 of the Constitution.”

10. Taking note of the observations of the Apex Court, we find that there is no prohibition in law that the highest authority should not take a decision or impose penalty as the primary authority in the matters of disciplinary action. On that basis, as observed by the Apex Court, it cannot be said that there will be discrimination violating Article 14 of the Constitution or causing material prejudice.

11. In such circumstances, considering that the disciplinary authority was the highest authority, it cannot be said that any prejudice would cause to the petitioner in case a fresh decision is taken by the disciplinary authority on the basis of the inquiry report.

12. Even on perusal of the charges framed against the petitioner, we find that the impugned order has not considered at all whether such acts committed by the petitioner would justify the termination of the services of the petitioner. The contents of the Circular dated 04.10.2006 specially Clause VIII therein has not been taken note of while passing the impugned order. Taking note of the overall facts and circumstances of the case, we find that the impugned order deserves to be quashed and set aside and the disciplinary authority would have to take a decision in accordance with law.

13. In view of the above, we pass the following :

O R D E R

- (i) The petition is partly allowed.
- (ii) The impugned order dated 06.10.2015 is quashed and set aside.
- (ii) The matter is remanded to the disciplinary authority appointed by order dated 10.09.2008 to take a

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decision afresh in the light of the observations made herein above as expeditiously as possible in accordance with law.

(iii) Rule is made absolute in the above terms.

(iv) The petition stands disposed of accordingly.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

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