

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3649 OF 2015**

Yashwant Pira Pagare

... Petitioner

Vs.

The In-Charge Deputy Director
Vocational Education & Training
Nashik.

... Respondent

....

Mr. N.V.Bandiwadekar Advocate for Petitioner
Mr. C.P.Yadav AGP for Respondent-State

....

**CORAM : D.H.WAGHELA CHIEF JUSTICE &
SMT.V.K.TAHILRAMANI, J.**

DATE : FEBRUARY 24, 2016

ORDER [PER SMT. V.K.TAHLIRAMANI, J.] :

1 Heard learned counsel for the parties.

2 This petition has been preferred by the petitioner being aggrieved by the Order of the Maharashtra Administrative Tribunal Bench at Mumbai ("the Tribunal" for short). By the said order dated 25.7.2014, Original Application No. 1296 of 2010 preferred by the petitioner seeking issuance of directions to set aside the order dated 30.11.2009 issued by

respondent no.1 i.e. Incharge Deputy Director Vocational Education and Training by which the punishment of stoppage of one increment for two years affecting future increment, was imposed on the petitioner, was dismissed. The petitioner had also challenged in the Original Application the order dated 6.9.2010 passed by respondent no.2 the Director (Training), the Directorate of Vocal Education, Mumbai by which the appeal preferred by the petitioner against the order dated 30.11.2009 was dismissed.

3 Brief facts of the case, are as under:

The petitioner was working in I.T.I. Nasik as Junior Surveyor-Cum-Junior Apprentice Advisor. The petitioner was proceeded against under Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. The Enquiry Officer submitted a report dated 24.7.2008 wherein it was held that out of five charges only the first two charges are proved. The said charges are as under:

"Charge No. 1 pertains to indulging in objectionable and exploitative conduct towards a lady Sau. Sulbha K. Sonawane by offering to arrange some employment to her.

Charge No.2 pertains to not undertaking a survey of

unemployed youth during the months February 2006 to April 2006".

Disagreeing with the conclusion pertaining to Charge Nos. 3 to 5, a show cause notice was issued and the petitioner was given an opportunity to submit his representation. After considering the representation, order dated 30.11.2009 was issued by respondent no.1 imposing punishment as stated in paragraph 1 above. Before the Tribunal, it was contended that the Disciplinary Authority was required to hold the enquiry against the petitioner, and for that, he should have entrusted the same by appointing an authority, as required under the provisions of the Public Servants (Enquiries) Act, 1850. The retired person Mr. Sayyed who was appointed as an Enquiry Officer had held the post of a Personal Assistant only and cannot be said to be an authority competent either under Rule 8(2) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 or under the provisions of the Public Servants (Enquiries) Act, 1950.

4 As regards the competency of the Enquiry Officer, it is seen that the Government had taken a policy decision to

appoint Enquiry Officers on a contract basis. A panel of retired Government Officers was constituted for conducting enquiries. The panel comprised of such officers who were ready to work on a contract basis. The competent authority was to make appointments of enquiry officers from the said panel. The Enquiry Officer Mr. Sayyed had also found a place in the said Panel and since he was interested in working at Nasik, the respondent no.1 had appointed him as an Enquiry Officer on contract basis. Thus we find no error in the appointment of Mr. Sayyed as the Enquiry Officer.

5 Thereafter it was contended that charge nos. 3 and 4 are mere repetitions of earlier charges and the Enquiry Officer found that charge nos. 3 and 4 were not proved. However, it is seen that as far as other charges are concerned, the Disciplinary Authority disagreed with the same, a show cause notice was issued and the petitioner was given an opportunity to submit his representation. After considering the representation submitted by him, the order dated 30.11.2009 was passed by the Regional Deputy Director (Vocational Education and Training) Nashik (Respondent No.1). The

petitioner submitted an appeal against the said order which was dismissed on 6.9.2010. The case of the respondents is that earlier the respondent had given only a warning to the petitioner by issuing a Memo to improve his behaviour and the same was wrongly treated as a punishment. The petitioner had been issued only a Memo directing him not to indulge in the misconduct observed at that time. The issuance of such a Memo does not amount to award of punishment. As per Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, a Memo is not entered in the service book and "Rule No.2" "states that a Memo is not a punishment". Only on the ground that the petitioner was issued Memo in the past, it cannot be held that the charges thereof, in the Disciplinary proceedings are wrong. In fact, there was no earlier enquiry proceedings under either Rule 8 or Rule 10 of the Maharashtra Civil Services (Discipline and Appeal) Rules in the past. Thus, as no punishment had been awarded to the petitioner regarding the contents of the charge Nos.3 and 4 in the past, the petitioner was correctly charged. It is in such case that the respondent no.1 disagreed with the findings of the Enquiry Officer. In the Memo dated 9.9.2008, the respondent no.1 had mentioned

specific reasons of disagreement.

6 In the case of **Principal Secretary, Govt. of Andhra Pradesh and Anr. Vs. M. Adinarayan (2004) 12 SCC 579**, the Supreme Court held that the Administrative Tribunal cannot sit as in an appeal over a decision based on the findings of Disciplinary proceedings. The judicial review cannot extend to an examination of correctness of the charges, as it is not an appeal, and there can be review only of the manner in which the decision was made. The Hon'ble Apex Court also held in the case of **Sayyed Rahamuddin Vs. Director General CSIR and other (2001) 9 SCC 575**, that "it is well settled that the conclusion or the finding of the fact that arise in a Disciplinary Enquiry can be interfered with by the court only when there are no material for the said conclusion and the conclusion cannot be that of a reasonable man".

7 In the case of **Damopanha Sagar Rural Regional Bank and Anr. Vs. Munna Lal Jain, 2005 AIR SCW 95**, the Hon'ble Supreme Court held that the scope of judicial review is limited in Disciplinary proceedings and the Court should not

interfere with administrative decisions, unless it was illogical or was shocking to the conscience of the Court. It was also held by the Hon'ble Apex Court in **Kailashnath Gupta Vs. Enquiry Officer, Allahabad Bank and Ors. 2003 (9) SCC 480**, that the power of interference with the quantum of punishment, is extremely limited.

8 The record shows that the authority had given adequate opportunity to the petitioner and has considered his representation and thereafter issued the impugned order. The contention of the petitioner is also that the punishment imposed on him is disproportionate. The petitioner has been awarded only a minor punishment of withholding of one increment for two years. It cannot be held that the said punishment is disproportionate to the seriousness of the charges.

9 As stated earlier, the record shows that proper opportunity was given to the petitioner at all stages. Sufficient evidence was adduced in relation to the charges and proper procedure has been followed while arriving at the final

conclusion. The Tribunal has taken into account all these facts and thereafter, dismissed the Original Application.

10 In view of the above facts, in our opinion, no interference is called for. Writ petition is dismissed.

[SMT. V.K.TAHILRAMANI,J.]

[CHIEF JUSTICE]

Kandarkur