

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.2407 OF 2015

(Shri Jagdish s/o Manikrao Khairkar vs. The Executive Director and others)

Office Notes, Office Memoranda of

Coram, appearances, Court's orders Court's or Judge's orders
or directions and Registrar's orders.

Shri A.B. Bambal, Advocate for petitioner.

Shri A.D. Mohgaonkar, Advocate for respondents.

CORAM : B.P. DHARMADHIKARI AND
KUM. INDIRA JAIN, JJ.

DATED : JUNE 22, 2016

Heard Adv. Bambal for petitioner and
Adv. Mohgaonkar for respondents.

Adv. Bambal has raised two contentions.
First contention is that alleged three communications
sent by Junior Engineer to petitioner have not been
proved in departmental enquiry. Second contention
is that to prepare his defence, on 29/3/2006 petitioner
had demanded some documents, but those documents
were never made available to him. He is relying
upon decision of Hon'ble Apex Court in **Rajendra**
Yadav vs. State of Madhya Pradesh and others
{(2013) 3 SCC 73} to press doctrine of equality.

Adv. Mohgaonkar for respondents

submits that during departmental enquiry or in subsequent appeals, communications sent by subordinate of petitioner, namely, a Junior Engineer on 3/7/2003, 4/8/2003 and 6/11/20003 were never in dispute. In those communications, possible theft was pointed out and petitioner as a superior did not pay any attention. He contends that in this situation, after mis-conduct is proved, proper punishment has been imposed upon petitioner as also his subordinate.

We find that subordinate Junior Engineer has been inflicted with punishment of withholding of two increments with cumulative effect. The petitioner as Assistant Engineer has been removed from employment. Perusal of record shows that petitioner never disputed these three communications. On the contrary, he attempted to capitalise on alleged ambiguity contained in those letters. If there was any ambiguity, as an Assistant Engineer and a responsible Officer, it was obligatory for him to seek necessary clarification or to visit the spot and inspect it. That has not been done.

Three documents demanded by petitioner are MR-1 documents of all four consumers for the period from May 2001 to July 2002, reading of their voltage and current noted between July 2003 and December 2003 while taking reading of monthly

consumption and test reports of tests conducted by Officers of Gondia region.

As fact of theft is not in dispute, it is apparent that these three documents are not relevant and it cannot advance the case of petitioner at all.

The perspective to be adopted by this Court in such matters is laid down by Hon'ble Apex Court in **State Bank of Patiala and others vs. S.K. Sharma** {(1996) 3 SCC 364}). Applying said standards, we find that petitioner has failed to prove any prejudice by non supply of those documents. Even no point of prejudice is argued before this Court.

Insofar as arguments on equality are concerned, in the case before Hon'ble Apex Court, i.e. **Rajendra Yadav vs. State of Madhya Pradesh and others** (supra), both delinquents were holding the same post, i.e. both were Constables and trapped in Anti Corruption raid.

Here one is Junior Engineer, who has reported the facts noted by him to his superior, namely, Assistant Engineer. The petitioner before this Court is Assistant Engineer. The ruling of Hon'ble Apex Court has, therefore, no application.

After his removal from service, petitioner challenged his removal in first appeal and second

appeal before departmental Authorities. Both the appeals have been dismissed.

We do not find any perversity or jurisdictional error. The petition is dismissed. No costs.

JUDGE

JUDGE

khj