

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

WRIT PETITION NO. 369 OF 2004

Aniruddha Nagorao Chinchkhedkar
Age : 45 yrs, occu.: service
R/o Nilkantnagar, Gouri Housing,
Old Jalna, District Jalna.

Petitioner.

Versus

1. The Additional Commissioner
Aurangabad Division,
Aurangabad.
(Copy to be served on G.P.
High Court of Bombay, Bench
at Aurangabad).

2. The Chief Executive Officer
Zilla Parishad, Jalna.

Respondents.

Mr.D.R. Irale Patil, Advocate for the petitioner.
Mr.A.R. Borulkar,A.G.P. for respondent No.1.
Mr.Bhushan Kulkarni, Advocate for respondent No.2.

**CORAM : R.D. DHANUKA &
SUNIL K.KOTWAL,JJ.**

**Reserved on : 26.09.2017.
Pronounced on : 13.10.2017.**

JUDGMENT : (PER SUNIL K. KOTWAL,J.)

1. This petition is filed under Article 226 of the Constitution of India to challenge the order dated 12.09.2002 passed by the respondent

No.2-Chief Executive Officer, Zilla Parishad, Jalna and the order dated 09.12.2003 passed by the respondent No.1 - Additional Commissioner, Aurangabad imposing penalty upon the petitioner under Rule 4 (iv) of Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1964 (hereinafter referred as "Discipline and Appeal Rules"), reducing to lower stage in a time scale.

2. Contention of the petitioner is that he works as a Leprosy Technician on the establishment of the Zilla Parishad, Jalna. On account of ailment of Tuberculosis, he proceeded on leave from 01.06.1994 to 14.06.1995. Despite filing of medical certificate, his medical leave was not sanctioned by the Competent Authority and he was referred to Medical Board, Aurangabad. He was examined on 13.12.1995 by the Medical Board and he was found fit to resume his duties. Thereafter petitioner produced medical certificate before respondent No.2 and requested him to permit the petitioner to join his duties. However, for the

period of 9 months no posting order was issued. On 30.03.1996, respondent No.2 issued posting order and the petitioner was posted at Primary Health Centre, Wakulni.

3. The next contention of the petitioner is that on 10.05.1999, respondent No.2 served a show cause notice to the petitioner as to why Departmental Enquiry should not be initiated against him. Without awaiting for reply of the petitioner, the Departmental Enquiry was initiated by respondent No.2 under order dated 22.06.1999. Six different charges were levelled against the petitioner for his unauthorised absence on duty without submitting leave application, making direct correspondence with higher authority and disobeying the orders of the superiors. On 23.03.1999, the petitioner was placed under suspension by respondent No.2, when he was posted at Primary Health Centre, Tembhurni. After his suspension, the petitioner joined at Zilla Parishad Office, Jalna since 07.08.1999. After completion of Departmental Enquiry, final enquiry

report was submitted in the year 2000. Contention of the petitioner is that despite his application dated 09.08.1999 for providing certain documents, those documents were not provided to him and Departmental Enquiry was proceeded without giving proper opportunity to the petitioner. As the Enquiry Officer held the petitioner guilty, on 20.02.2002 show cause notice was served on the petitioner as to why major penalty of compulsory retirement should not be imposed against him. That notice was replied by the petitioner on 20.03.2002 and 16.04.2002. However, without considering the reply of the petitioner, respondent, respondent No.2 passed the impugned order dated 12.09.2002 and petitioner was placed in the lowest pay scale of Rs. 4000 to 6000. The suspension period from 23.03.1999 till 30.09.2002 was treated as 'suspension' and the period from 01.06.1994 to 28.01.1999 was treated as 'unauthorised absence' from the duty.

4. Being dis-satisfied by this order, the petitioner filed an appeal under Rule 13 of the

Discipline and Appeal Rules. On 09.12.2003, respondent No.1 dismissed the said appeal. Therefore, the petitioner was constrained to file this Writ Petition to challenge both the impugned orders.

5. Learned Counsel for the petitioner submits that after service of show cause notice to the petitioner, the respondent No.2, without waiting for the say of the petitioner, immediately passed order for initiating Departmental Enquiry against the petitioner.

6. In reply, the learned Counsel for the respondents submits that despite sufficient opportunity, petitioner did not submit his reply, and therefore, on 22.06.1999 an order was passed by respondent No.2 to initiate Departmental Enquiry against the petitioner.

7. However, under Rule 6 of the Discipline and Appeal Rules, the procedure is prescribed for passing order imposing on a Parishad servant any

of the penalties specified in Clauses IV to VII of Rule 4. Under Rule 6 (2) order of such major penalty cannot be passed except after holding enquiry. The procedure for holding enquiry is prescribed under Rule 6 (2) to (12) of Discipline and Appeal Rules. Rule 6 (2) only provides that Disciplinary Authority shall frame definite charges on the basis of the allegations on which the enquiry is proposed to be held. Such charges together with the statement of allegations on which they are based shall be communicated in writing to the Parishad servant and he shall be required to submit within such time as may be specified by Disciplinary Authority, to such authority a written statement of his defence and also to state whether he desires to be heard in person.

8. On perusal of the record placed before the Court, it emerges that in compliance with Rule 6 (2) of Discipline and Appeal Rules, on 10.05.1999, notice (Exhibit-C) was issued and served to the petitioner together with charges on

the basis of allegations on which enquiry was proposed to be held, with statement of allegations on which they are based. Direction was given to the petitioner to file written statement of his defence within 10 days from the date of service of notice and opportunity of personal hearing was also given to him. However, as within prescribed time limit the petitioner did not file his written statement of defence. On 22.06.1999 the respondent No.2 passed an order to proceed with Departmental Enquiry against the petitioner and appointed Enquiry Officer as well as Presenting Officer in compliance with Rule 6 (5) of the Discipline and Appeal Rules. We do not find any illegality in the procedure followed by the Department as stated above.

9. The next objection of learned Counsel for the petitioner is that the copies of required documents were not provided to the petitioner, and therefore, he could not file written statement of his defence. In reply, learned Counsel for the respondents submitted that petitioner did not pay

requisite fees for obtaining certified copies of the required documents and thus he is responsible for not providing documents to him.

10. Rule 6 (4) of the Discipline and Appeal Rules provides that a Parishad servant shall for the purpose of preparing his defence be permitted to inspect and take extract from such official record as he may specify. However, Disciplinary Authority or Enquiry Officer may refuse such permission if such record is not relevant for the purpose of enquiry or it is against the public interest to allow the Parishad servant access thereto.

11. However, on perusal of record, it emerges that on 09.08.1999, the petitioner submitted application to District Health Officer, Zilla Parishad, Jalna for supply of copies of five documents. District Health Officer, Zilla Parishad, Jalna is not the Competent Officer who can provide inspection of record or copies of required document to the petitioner. In view of

Rule 6 (4) of the Discipline and Appeal Rules, such application should have been filed by the petitioner before Enquiry Officer or Disciplinary Authority i.e. the respondent No.2. However, the petitioner has not filed copy of application for documents submitted to Enquiry Officer or Disciplinary Authority. When petitioner did not file application for certified copies before Disciplinary Authority or Enquiry Officer, he cannot blame the Enquiry Officer or Disciplinary Authority for not providing copies of required documents to him.

12. Subsequently, on 11.08.2000 petitioner filed application before Enquiry Officer for supply of copies of the documents. However, this application itself shows that he did not specify exactly which documents were required by him. As per letter dated 15.09.2000 addressed to the petitioner, he was informed to give particulars of the documents required by him and to pay necessary fees as per rules for copies of those documents. However, instead of providing such particulars,

petitioner issued letter dated 11.10.2000 and refused to pay copying fees on the ground that he was under suspension and without pay. Even in reply letter he did not give particulars of required documents. If this letter correspondence is taken into consideration, it becomes clear that due to his own conduct the petitioner could not get copies of the required documents. Therefore, now he cannot blame the Department for not providing copies of required documents to him.

13. The next limb of the argument of learned Counsel for the petitioner is that the charges levelled against the petitioner are vague. He placed reliance on the judgment in the case of **"Sawai Sing Versus State of Rajasthan"**, reported in **(AIR 1986 SC 995)** wherein the Apex Court observed that, "where the charges framed against the delinquent were vague and no allegations regarding it have been made by him before Enquiry Officer or before the High Court, the fact that he has participated in the enquiry would not exonerate the Department to bring home charges.

The enquiry based on such charges would stand vitiated being not fair".

14. In reply, learned Counsel for the respondents submitted that the charges levelled against the petitioner are not vague and fair opportunity was awarded to the petitioner to face those charges.

15. After going through the charges and statement of imputation annexed with the charge-sheet, it emerges that total six charges were framed against the petitioner. Those are as under:

- (i) unauthorised absence from the duty.
- (ii) absence from the duty without prior permission of Competent Authority and without giving intimation or leave application to the office or the Competent Authority.
- (iii) seeking permission to join duty by showing false reason of illness.
- (iv) remaining absent from duty despite joining orders by the Office and thereby causing obstruction in

providing health services to the public.

- (v) making direct correspondence to the Higher Office.
- (vi) disobeying the orders of superiors and not replying show cause notices issued by the superiors.

16. In statement of imputations every particular of alleged misconduct of the petitioner is mentioned. Therefore, we hold that the objection raised by the learned Counsel for the petitioner regarding vagueness of the charges in Departmental Enquiry, is baseless and thus rejected.

17. The next objection of learned Counsel for petitioner is that though the petitioner was absent on duty from 01.06.1994 to 16.04.1995, Departmental Enquiry was initiated after inordinate delay i.e. on 22.06.1999 and the enquiry report was submitted on 30.10.2001.

18. However, we do not find any substance in the above objection for the reason that the

enquiry was not initiated only on the ground of unauthorised absence from 01.06.1994 to 16.04.1995, but the enquiry was initiated for all along unauthorised absence of the petitioner from 01.06.1994 to 07.06.1996 and from 09.06.1996 to 28.01.1999. Therefore, it cannot be said that the Departmental Enquiry was initiated after inordinate delay from the alleged misconduct. So also, from the enquiry report, it emerges that on account of absence of the petitioner or adjournment sought by the petitioner, the enquiry could not be completed till 30.10.2001. The petitioner cannot take benefit of his own wrongs and blame the department for the reason of delay in completing the Departmental Enquiry.

19. The next objection raised by learned Counsel for the petitioner is that though the petitioner submitted medical certificate issued by T.B. Medical Board and fitness certificate issued by Medical Board, Medical College Hospital, Aurangabad, the Enquiry Officer erroneously held the period from 01.06.1994 to 16.04.1995 as

"unauthorised absence''.

20. Trite law is that, while examining correctness of the orders passed in domestic enquiry, while exercising writ jurisdiction, this Court cannot re-appreciate the evidence like Appellate Court. Unless the order passed by Disciplinary Authority or Appellate Authority is perverse, this Court cannot interfere.

21. After going through the certificate issued in Form-5 (Exhibit-A) relied on by the petitioner, it emerges that in fact this certificate is merely a certificate of "fitness" and not medical certificate regarding Tuberculosis illness for the period from 01.06.1994 to 16.04.1995. Another important aspect to be noted is that, in this certificate (Exhibit-A), it is nowhere mentioned that the petitioner was treated at T.B. Centre, Aurangabad for the disease 'Tuberculosis' during the period from 01.06.1994 to 16.04.1995. Therefore. the medical certificate (Exhibit-A) relied on by the petitioner cannot be

treated as a medical certificate issued by the Competent Medical Officer or Board regarding the ailment of the petitioner as Tuberculosis from 01.06.1994 to 16.04.1995.

22. The record shows that respondent No.2 did not accept the medical certificate filed by the petitioner and therefore, he was referred for medical examination to Medical Board, Medical College Hospital, Aurangabad. On 28.11.1995, Medical Board, Medical College Hospital, Aurangabad issued letter to Medical Officer, Tuberculosis Centre, Aurangabad and called his remarks for the reason that the medical certificate issued by T.B. Centre, Aurangabad as well as the medical certificate issued by private practitioner Dr. D.E. Jawlekar covered same period of treatment i.e. 01.06.1994 to 16.04.1995. Thus, it reveals that Medical Board, Government Medical Hospital, Aurangabad was doubtful about correctness of medical certificate issued by T.B. Centre, Aurangabad, relied on by the petitioner. The certificate issued by Medical Board, Medical

College Hospital, Aurangabad shows that Medical Board expressed its inability to opine on illness of the petitioner for the period from 01.06.1994 to 16.04.1995 and it only issued fitness certificate in favour of the petitioner. This material on record is certainly sufficient to hold that because petitioner failed to satisfy that from 01.06.1994 to 16.04.1995 he was under medical treatment for Tuberculosis, the Department as well as the Enquiry Officer held this period as unauthorised absence of the petitioner.

23. The report of the Enquiry Officer shows that on the basis of material placed on record, he held that the petitioner was unauthorisely absent from 01.06.1994 to 07.06.1996 and again from 09.06.1996 to 28.01.1999. Even in the reply (Exhibit-F) to final show cause notice, in para 4 petitioner has admitted that after receipt of posting order dated 30.03.1996, he joined his duty at Primary Health Centre, Wakulni on 08.06.1996 and since 09.06.1996 he was absent on account of illness of his mother. He has also admitted in

this reply that he did not file leave application in the prescribed proforma. Otherwise also, the petitioner has not filed any documentary evidence on record to show that during his absence period, he submitted leave application to the Department or he had given prior intimation to the Department about his absence. In the circumstances, we do not find perversity in the finding of Enquiry Officer, that petitioner was absent from duty from 01.06.1994 to 07.06.1996 and from 09.06.1996 to 28.01.1999, without prior intimation and without submitting leave application.

24. Under Rule 6 (1) of Maharashtra Zilla Parishad District Services (Conduct) Rules, 1967 (hereinafter referred as "Conduct Rules"), no Parishad servant can address directly any communication to any superior authority other than that to which he is immediately subordinate in any matter relating to his official duties. One of the charge against the petitioner is that he directly communicated with superior authority other than that to which he is immediately

subordinate. In para 5 of reply to final show cause notice, petitioner has admitted such direct correspondence with District Health Officer in contravention with Rule 6 (1) of the Conduct Rules.

25. In the circumstances, after perusal of material placed on record, we are fully satisfied that the finding of Enquiry Officer that all charges are proved against the petitioner cannot be termed as perverse finding.

26. The next submission of the learned Counsel for the petitioner is that, multiple punishment was imposed against the petitioner. However, we do not find any substance in this submission for the simple reason that in the order dated 09.12.2003 passed by respondent No.1 in Departmental Appeal, he has made it clear that only single punishment was imposed on the petitioner i.e. he was brought to the basic pay in the pay scale. The other part of the order of punishment is regarding regularisation of his

absence period. Regularisation of absence period of the petitioner cannot be called as 'punishment'. Thus, the objection regarding imposing multiple punishment to the petitioner is not acceptable.

27. Learned Counsel for the petitioner submits that in the show cause notice punishment of compulsory retirement was proposed, but while imposing punishment, instead of compulsory retirement, punishment of reducing to lower pay scale was imposed.

28. However, reduction of lower pay scale is not a severe punishment than the punishment of compulsory retirement. The Disciplinary Authority is not bound by law to impose the same punishment which is mentioned in final show cause notice. The imposed punishment can be lessor than mentioned in the show cause notice. Accordingly, the above objection raised by learned Counsel for the petitioner is rejected.

29. The next limb of the argument of learned Counsel for the petitioner is that the punishment of reducing to basic pay scale is absolutely disproportionate with the charges proved against the petitioner. He requested to remand this matter to the Disciplinary Authority with direction to reconsider the penalty imposed. He placed reliance on the judgments in the cases of **"Dev Singh Versus Punjab Tourism Development Corporation Ltd."**, reported in (AIR 2003 Supreme Court 3712) and **"Kailash Nath Gupta Vs. Enquiry Officer, Allahabad Bank and others"**, reported in (AIR 2003 Supreme Court 1377). The ratio of these authorities is that, "if the punishment imposed by Disciplinary Authority is shocking conscience of the Court, the Court may direct the Authority to reconsider the penalty imposed or in rare case, itself impose the appropriate punishment".

30. However, the ratio of the above cited both authorities is distinguishable, because in the cases before the Apex Court the petitioners were dismissed from the service. The case before

us is not the case in which the petitioner is dismissed from the service. Recently in the case of **"Chief Executive Officer, Krishna District Co-operative Central Bank Limited Versus K. Hanumanta Rao"**, reported in [2017 (4) Mh.L.J. 484], the Apex Court observed that,

"It is trite that Courts, while exercising their power of judicial review over such matters, do not sit as the appellate authority. Decision qua the nature and quantum is the prerogative of the disciplinary authority. It is not the function of the High Court to decide the same. It is only in exceptional circumstances, where it is found that the punishment/penalty awarded by the disciplinary authority / employer is wholly disproportionate, that too to an extent that it shakes the conscience of the Court, that the Court steps in and interferes".

31. While examining whether the penalty of reduction to lower pay scale awarded by the Disciplinary Authority is wholly disproportionate, that too to an extent that it shakes the conscience of the Court, we must consider the circumstances of the present case. In the present case, the petitioner was serving as Leprosy Technician in the Health Department. Therefore,

he was directly connected with the health of public at large and specifically with suspected leprosy patient. As held in the Departmental Enquiry, the petitioner unauthorisely remained absent from his official duty without prior permission of higher officer and without prior intimation to his own office for the period for more than 4 years and 6 months. The reasons assigned by the petitioner for his absence are absolutely lame and not acceptable. The overall conduct of the petitioner indicates that he is nothing but a dead wood in the Health Department of Zilla Parishad, Jalna. In fact, the Disciplinary Authority has shown most lenient approach while awarding such lessor punishment of only reduction to lower pay scale. We hold that the punishment imposed by the Disciplinary Authority is not disproportionate, that too to an extent that it shakes the conscience of the Court. Therefore, we find no reason to interfere with the punishment imposed by the Disciplinary Authority against the petitioner.

32. The last submission of the learned Counsel for the petitioner is that the respondent No.1 did not apply mind while deciding the appeal preferred by the petitioner against the order passed by respondent No.2. He placed reliance on the judgment in the case of **"Director (Marketing), Indian Oil Corporation Ltd., Vs. Santosh Kumar"**, reported in [(2006) 11 Supreme Court Cases 147]. In that case, in appeal against order of dismissal passed by Disciplinary Authority, the Appellate Authority by simply adopting the language employed by Disciplinary Authority, refused to interfere with the dismissal order. There was total non application of mind. Therefore, the matter was remitted for fresh consideration by Disciplinary Authority.

33. However, in the case at hand, after going through the order passed by respondent No.2 dated 12.09.2002, it emerges that the Disciplinary Authority has considered the Enquiry Report as well as explanation submitted by petitioner delinquent and thereafter passed an order of

punishment of reduction to initial pay scale. Thus, it cannot be said that there was total non application of mind by Disciplinary Authority. So also, the order passed by respondent No.1 in the Departmental Appeal filed by petitioner shows that even the Appellate Authority has considered what were the charges levelled against the petitioner as well as what were the various objections raised by the petitioner. The appellate authority has explained the order of punishment imposed by Disciplinary Authority that it was not an order of multiple punishment, but the punishment was only regarding reduction to basic pay scale and the order regarding suspension period or unauthorised absence period of the petitioner was only regularisation of that respective period. Thus, there was certainly application of mind by the Appellate Authority, while dismissing the Departmental Appeal preferred by petitioner. The above cited authority relied on by the petitioner can be distinguished.

34. Accordingly, our conclusion is that the

orders passed by Disciplinary Authority as well as the Appellate Authority are not perverse, and even the punishment imposed by Disciplinary Authority is not disproportionate which shakes conscious of this Court. This petition being devoid of merit, deserves to be dismissed.

35. Accordingly we pass the following order.

ORDER

- a) Writ Petition No 369 of 2004 is dismissed.
- b) Rule is discharged.
- c) No order as to costs.

(SUNIL K. KOTWAL)
JUDGE

(R.D. DHANUKA)
JUDGE
