

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

WRIT PETITION NO. 1849 OF 2017

Pravin Jagannathrao Andole .. Petitioner

Versus

The Registrar Administration High
Court of Bombay 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
SANGITRAO S. PATIL, JJ.
DATE : 17TH MARCH, 2017.**

PER COURT :

. The petitioner vide the instant petition assails the disciplinary enquiry initiated against him.

2. The present petition is filed after the departmental enquiry has almost culminated i. e. the report has been submitted by the enquiry officer and the final show cause notice is issued to the petitioner.

3. It appears that, initially preliminary enquiry was conducted and thereafter the departmental enquiry has been initiated which has traveled till the stage of issuance of final

show cause notice. It is at this stage, present petition is filed.

4. Mr. Deshmukh, the learned counsel for the petitioner strenuously contends that the petitioner at the relevant time was working as a Assistant Superintendent. The service career of the petitioner is unblemished. According to the learned counsel, the departmental proceedings initiated are violative of principles of natural justice. The learned counsel submits that, the petitioner was at Aundha from 29.03.2008 to 31.05.2009 as Assistant Superintendent. After eleven months of the petitioner being transferred from the said place, the proceedings on or about 07th April, 2010 were initiated in respect of missing files. The petitioner was working as a Assistant Superintendent and was not custodian of any file. The duties of Assistant Superintendent are defined and nowhere it is stated that, the Assistant Superintendent would be the custodian of the files. At the most the same could be said to be the duty of the senior clerk. According to the learned counsel, if the statements are perused, nowhere involvement of the petitioner can be shown. The proceedings have been initiated on account of malice. The enquiry is the result of malice in law. It is because the disciplinary authority at the relevant time was having animus against the petitioner, the said proceedings have been initiated. If, at all the petitioner could have been involved, then at the time when the petitioner was posted at Aundha, the enquiry could

have been initiated against the petitioner. The facts on record clearly depict about the existence of malice. Without any justifiable reason the enquiry is initiated. The enquiry is not only initiated in respect of missing files, but is also initiated in respect of receipt of files. The facts on record *ex-facie* would establish that the enquiry is with malice. The matter was referred to the hand writing expert that is the Government Forensic Laboratory. Sensing that the report would not be favourable, the disciplinary authority thereafter referred it to a private hand writing expert. The language of the said letter itself shows that the disciplinary authority required the co-operation of the private hand writing expert asking him to do the needful. The learned counsel submits that the statements on record if read would irresistibly point out that the whole proceeding is actuated with malice. The learned counsel to substantiate his contention and to put forth his case of enquiry been result of malice relies on the judgment of the Apex Court in a case of **West Bengal State Electricity Board Vs. Dilip Kumar Ray** reported in (2007) 14 SCC 568. The learned counsel further submits that, if the departmental enquiry is without any cause or is the result of malice, then this Court can interfere and set aside the said departmental enquiry. The learned counsel relies on the judgment of the Apex Court in a case of **State of Punjab Vs. V. K. Khanna and others** reported In (2001) 2 SCC 330.

5. According to the learned counsel, there has to be fairness in action. The facts on record clearly points out bias on the part of the then disciplinary authority and this Court would consider the factual aspects, *ex-facie* element of malice exist, as such this Court may quash and set aside the said departmental enquiry.

6. We have also heard Mr. Godbole, the learned counsel for respondents.

7. As observed supra, the departmental enquiry is at the fag end. The enquiry report is also submitted. Final show cause notice is issued to the petitioner and upon receipt of reply the decision has to be taken by the disciplinary authority. We had asked the learned counsel for the petitioner as to whether the petitioner has any grievance with the present disciplinary authority. The learned counsel for the petitioner on instructions replied that as far as present disciplinary authority is concerned, the petitioner does not have any grievance.

8. After receipt of the reply, the disciplinary authority has to take decision upon the documents available. The departmental enquiry is not assailed at its nascent or incipient stage. In the present case, evidence is recorded. Final show cause notice is issued. At this stage, if we comment upon the merits of the

evidence on record, it would not be prejudicial to either of the parties. We refrain ourselves from observing anything upon the merits of the evidence that has been adduced, so that it would not prejudice any of the parties.

9. As far as the subject of malice in law is concerned, the same needs no debate. The concept of malice in law is discussed in the authoritative pronouncement of the Apex Court in the case of West Bengal State Electricity Board Vs. Dilip Kumar Ray referred to supra. The malice in law has to be deduced from the facts and circumstances on record. As we have observed above, that at this stage, it would not be appropriate for us to comment upon the evidence on record, we are not entering into the evidence recorded. The disciplinary authority is required to take decision upon the same and more particularly when the enquiry report is already received and final show cause notice is issued.

10. The writ petition accordingly stands disposed of. No costs.

[SANGITRAO S. PATIL, J.]

[S. V. GANGAPURWALA, J.]

bsb/March 17