IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10226 OF 2016

1. The State of Maharashtra,
   through its Secretary,
   Finance Department,
   Mantralaya, Mumbai-32

2. The Director of Accounts and
   Treasuries, M.S. Mumbai

3. The District Treasuries Officer,
   Parbhani **PETITIONERS**

VERSUS

Syed Azam s/o Syed Lal,
Age : 57 years, occu. Service,
R/o Silk Mill Colony,
C/o Dr. Zakir Khan, Aurangabad,
at present c/o Ms. A.N. Ansari,
Advocate, High Court, H.No. 1-19-25,
Opp. Anti Corruption Office,
Junabazar, Aurangabad **RESPONDENT**

Mr. S.B. Joshi, A.G.P. for the petitioners/State
Smt. A.N. Ansari, Advocate for the respondent

CORAM : T.V. NALAWADE AND SANGITRAO S. PATIL, JJ.

JUDGMENT RESERVED ON : 28th FEBRUARY, 2017
JUDGMENT PRONOUNCED ON : 20th MARCH, 2017

JUDGMENT (PER : SANGITRAO S. PATIL, J.) :

Rule, returnable forthwith. Heard finally with the consent of the learned A.G.P. and the learned counsel for the respondent.

2. The petitioners have challenged the judgment and order dated 14th March, 2016, passed in Original Application No. 229 of 2009 by the Maharashtra Administrative Tribunal, Mumbai, Bench at Aurangabad (hereinafter referred to as "Tribunal", for short), whereby the order of dismissal dated 25th June, 2007 passed against the respondent by petitioner No. 1 – Secretary, Finance Department, Mantralaya, Mumbai and confirmed in administrative appeal vide order passed on 22nd June, 2010 by the Government of Maharashtra, came to be quashed and set aside and the respondent came to be exonerated from the charges bearing Nos. 3 to 7 and 9 in the departmental enquiry held against the respondent.

3. The respondent was serving as a Junior Clerk in the office of petitioner No. 3 – the District Treasury Officer, Parbhani. He was looking after the lottery section. The said section was inspected through the office of the Director of Accounts and Treasuries, Mumbai in the year 1993. The inspecting party found many discrepancies, irregularities and illegalities in the functioning of the lottery section. It was further

noticed that there was misappropriation of the amount of more than Rs. 14,00,000/-. Resultantly, eight employees, including the respondent, connected with that section were suspended in the month of July, 1995. After issuing show-cause notice and considering the reply of the respondent, a departmental enquiry was initiated against him. He was served with the chargesheet on 9th July, 1996. The respondent filed written statement on 22nd July, 1996 and denied the charges levelled against him. Since the contents of the written statement were not found satisfactory, departmental enquiry was conducted against him. One Shivaji Vithalrao Dhande, a watchman and Syed Najeeb Razvi, Deputy Accounts Officer came to be examined as witnesses on behalf of the petitioners. Certain documents, circulars, letters and challans were produced before the Enquiry Officer. The Enquiry Officer found the respondent guilty of charge Nos. 1 to 5 and 7 to 10 and partly guilty of charge No. 6. Accordingly, the Enquiry Officer submitted the enquiry report to petitioner No. 1 – Secretary. After considering the representation of the respondent against the enquiry report, holding him guilty of the charges levelled against him, petitioner No. 1 passed an order on 25th June, 2007, which was communicated to the respondent on 25th July, 2007, and dismissed him from service. The respondent preferred a departmental appeal against that order. The said appeal came to be dismissed on 22nd June, 2010. Being aggrieved by those orders, the respondent filed Original Application No. 229 of 2009.

4. The Tribunal heard both sides and after considering the evidence recorded by the Enquiry Officer, came to hold that charge Nos. 1, 2, 8 and 10 only were proved against the respondent. The findings of holding the respondent guilty of the charge Nos. 3, 4, 5, 6, 7 and 9 were set aside by the Tribunal with the observations that they were perverse and not supported by any evidence. This order dated 14th March, 2016 has been challenged in the present writ petition.

5. Heard the learned A.G.P., representing the petitioners and the learned counsel for the respondent. Perused the copies of the record of the departmental enquiry with reference to charge Nos. 3, 4, 5, 6, 7 and 9, of which the Tribunal has exonerated the respondent.

6. As seen from charge No. 3, the respondent was

alleged to have facilitated misappropriation of the amounts collected through sale of tickets by not getting verified the plus-minus memos prepared in the prescribed manner and further, mentioned bogus figures in plus-minus memos. The respondent, in his representation made to petitioner No. 1 – the Secretary, specifically stated that one Shri Pathak and Shri Munde were not allowing him to do any work of lottery section. The Enquiry Officer referred to the documents P-11 to P-16 in the reasoning part of the report. P-11 is the Circular dated 3rd March, 1969, P-12 is the Circular dated 5th April, 1984, P-13 is the Circular dated 6th October, 1993, P-14 is the letter dated 30th September, 1995 addressed by Shri D.V. Pathak, the Deputy Treasury Officer, Kalamnuri to the Treasury Officer, Parbhani informing that plus-minus memos were never prepared by the official concerned working in the lottery section, during his tenure as Supervisor of Collection Branch. P-15 is the letter issued by Shri Anand Mundhe, Deputy Accounts Officer, Parbhani giving his explanation on certain points to the Treasury Officer, Parbhani and informing that the official concerned working in lottery section never prepared plus-minus memos. P-16 is the chart containing information about sending and non-sending of plus-minus memos during the period from June, 1991 to September, 1995. In the letters P-14 and P-15, it is not mentioned specifically that it was the respondent who did not prepare plus-minus memos. Both of the officers, who issued these letters, have not been examined. The Enquiry Officer did not discuss in detail as to how the respondent alone was responsible for not preparing plus-minus memos. The explanation dated 26th June, 1995 given by the respondent does not show that he admitted his guilt for not preparing plus-minus memos. However, the Enquiry Officer treated explanation of the respondent as his admission and held him guilty of the said charge.

7. As per charge No. 4, it was alleged that the respondent sent bimonthly and quarterly statements to the Accountant General without getting verified the amount of sale of lottery tickets with the amount of collection branch and thereby deceived the superior officers and misappropriated the amount. No oral evidence was produced in support of this charge. It was immensely necessary to examine the concerned officer

from the collection branch to prove discrepancy in the bimonthly and quarterly statements sent to the Accountant General with reference to the record of his office. There is no mention as to how by sending such statements, there has been misappropriation of any particular amount.

8. As per charge No. 5, the respondent is alleged to have misappropriated the amount of Rs. 52,870/- by making bogus challans and further misappropriated the amount of Rs. 85,090/- by making false signatures of the bank officers and his superior officers and by using false rubber seals. This is quite a serious charge. However, no oral evidence was produced in support of this charge. At least, the officers, who disputed the signatures on the challans or the record maintained in the lottery section, as their own, should have been examined. However, none of such officers has been examined. There is no evidence to show that the above stated amounts were actually entrusted with the respondent. A reference has been made to the alleged admission given by the respondent, probably in his explanation dated 26th June, 1995. In that explanation,

he has stated that after receiving the phone message about the death of his brother, he left his office on 19th June, 1995 without giving an application for leave and came back on 23rd June, 1995. Therefore, he could not make available the record to the inspecting party. He accepted that the entries in respect of the period from July, 1994 to march, 1995 had remained to be taken in the lottery record. However, he clarified that he has prepared the accounts on the basis of challans, weekly reports, etc., which record has been countersigned by the Treasury Officer. He assured that he would not keep such work pending in future. Nothing is there in this explanation which would indicate that he admitted to have misappropriated the above mentioned amounts. Thus, there was no evidence to establish misappropriation of the above mentioned amounts on the part of the respondent.

9. As per charge No. 6, it is alleged that the respondent did not deposit the sale proceeds of lottery tickets in the bank, did not make entries about such sale of tickets in the registers, kept the entries in the register blank, did not destroy the balance tickets

and thereby misappropriated Rs. 10,52,775/-. To prove this charge, there is no oral evidence. The Enquiry Officer has referred to a document – P-11 which is a circular dated 3rd March, 1969 issued by the Finance Department, P-27 is a Circular dated 31st October, 1988, P-28 is the summary of the lottery tickets found to have been missing during the tenure of the respondent having total value of Rs. 10,57,775/-. However, the officer who prepared this summary has not been examined. The respondent did not get an opportunity to cross-examine the officer who prepared that record. P-31 is another circular dated 31st January, 1990, issued by the Finance Department. On the basis of such evidence, even the Enquiry Officer did not hold that charge No. 6 has been proved against the respondent. Nevertheless, he mentioned that it has been partly proved. This finding of the Enquiry Officer is ex-facie perverse.

10. As per charge No. 7, it is alleged that the respondent did not verify whether the challan in respect of the price of the tickets sold to the agents were genuine or not, did not destroy the balance tickets after the results of the lottery were declared and

because of not maintaining the registers properly, the amount of Rs. 1,26,209/- was paid towards prize on the basis of the tickets which were not actually sold out from the treasury and for that, the respondent was responsible. No witness has been examined to prove this charge though a number of witnesses could have been produced by the petitioners. The Government Resolution dated 18th April, 1985 (P-32) has been produced with copy of the inspection note of lottery section (P-33). Nobody has been examined to prove the objections in the inspection note. The respondent has not got the opportunity to cross-examine any witness on this point. In the circumstances, on the basis of such mute evidence, charge No. 7 could not have been proved against the respondent.

11. As per charge No. 9, the respondent is alleged to have made forged and bogus signatures of the officers in the registers, made manipulations in the entries of the said registers and thereby cheated the Government. No witness has been examined to prove this charge. The officers concerned could have certainly been examined to prove that the signatures appearing in the record of

lottery section were not made by them. The ex-Additional Treasury Officers Shri Murumkar and Shri Tare are stated to have given letters P-37 and P-38 respectively, informing that certain signatures on the entries in the registers were not made by them. However, both these officers were not examined to prove the said fact. No explanation has been given by the Enquiry Officer for non-examination of these witnesses. Merely on the basis of these letters, charge No. 9 is stated to have been proved against the respondent.

12. The Enquiry Officer seems to have conducted the enquiry in a most casual manner. The enquiry report so far as the above referred charge Nos. 3, 4, 5, 6, 7 and 9 are concerned, is ex-facie cryptic. The principles of natural justice have not at all been followed. The respondent has not been extended an opportunity to rebut the value, if it is to be attached, to the above stated documents which have been relied on by the Enquiry Officer. Without examining the authors thereof, the Enquiry Officer has relied on them. In the circumstances, the findings recorded by the Enquiry Officer holding the respondent guilty of the said

charges will have to be held as perverse. The Tribunal has rightly considered all these aspects. Since the findings were perverse, the Tribunal was right in setting aside the said findings. In the circumstances, the judgment in the case of ***Union of India and others V. P. Gunasekaran 2015 (2) SCC 610***, cited by the learned A.G.P., wherein it is held that no interference is called for with the conclusions drawn in the departmental enquiry unless the finding of fact is based on no evidence or perverse or the principles of natural justice in conducting the proceedings have not been followed, would not be of any help to the petitioners. As stated above, the Enquiry Officer, in the present case, has not followed the principles of natural justice, has acted upon the evidence which legally was not liable to be considered and the findings recorded by him in respect of charge Nos. 3, 4, 5, 6, 7 and 9 are perverse.

13. Though the charges bearing Nos. 1 to 3 and 10 have been proved against the respondent, considering the nature of the said charges, the punishment inflicted on the respondent of dismissal from service, apparently,

appears to be disproportionate.

14. The Tribunal has rightly considered the facts of the case and has rightly set aside the findings recorded by the Enquiry Officer in respect of charge Nos. 4 to 7 and 9 and has rightly set aside the punishment of dismissal from service recorded against the respondent. The Tribunal has rightly directed the petitioners to take necessary action against the respondent in view of proof of charge Nos. 1, 2, 8 and 10. We do not find any reason to interfere with the judgment and order passed by the Tribunal. Hence, the following order:-

15. The Writ Petition is dismissed. Rule is discharged accordingly. No costs.

Sd/-
[**SANGITRAO S. PATIL**]
JUDGE

Sd/-
[T.V. NALAWADE]
JUDGE