

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

WRIT PETITION NO. 10256 OF 2012

Manohar Ganpatrao Kapsikar
Age : 79 years, occu.: pensioner
(Retired Executive Engineer),
R/o 701, Visawa Nagar, V.I.P. Road,
Nanded.

Petitioner.

Versus

The State of Maharashtra
Through the Secretary,
Irrigation Department,
(Now Water Resources Department),
Government of Maharashtra,
Mantralaya, Mumbai 400 032.

Respondent.

Mr. P.R. Patil, Advocate for the petitioner.

Smt. V.S. Chaudhary, A.G.P. for the State/Respondent.

CORAM : **RAVINDRA V. GHUGE
 AND
 SUNIL K. KOTWAL, JJ.**

Dated : 04-12-2017.

ORAL JUDGMENT (PER RAVINDRA V. GHUGE) :-

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. The petitioner, in this petition, seeks to challenge the judgment of the Maharashtra Administrative Tribunal dated 04.03.2008 by which his Original Application No.1127/1993 was dismissed.

3. The relevant prayers put-forth by the petitioner in Clauses 18-B and 18-C, read as under :-

18-B. *By issuing writ of certiorary or any other writ in like nature or order or directions, the order dated 04.03.2008 passed by the Maharashtra Administrative Tribunal, in Original Application No.1127 of 1992 be quashed and set aside.*

18-C. *By issuing writ of mandamus or any other writ in like nature or orders or directions the impugned order of censure dated 20.03.1992 issued by the Respondent Government be quashed and set aside.*

4. Shri Patil, learned Advocate for the petitioner submits that the petitioner is now an 84 years old citizen who is litigating only to ensure that his respect and honour is restored, considering the impugned order dated 20.03.1992 passed by the Competent Authority, thereby censuring the petitioner. The petitioner has superannuated from service on 31.03.1992. The impugned order of censure does not in any way affect his retiral benefits and no monetary loss has been caused to him by the impugned order. However, the petitioner, who is at the twilight of his life, desires that the blot of the order of censure be washed away.

5. The relevant factors which need to be considered while deciding this Petition are as under :-

(a) The petitioner was performing his duties as an Executive Engineer in the Jayakwadi Project, Division No.7 at Wadigodri, District Aurangabad during the construction of the Jayakwadi Canal from September 1971 till March 1974.

(b) After he was transferred from the Division in March 1974, he had handed over the charge to the successor Executive Engineer on 06.03.1974.

(c) A charge-sheet was issued on 28.01.1983 after 8 years and 10 months from the date of handing over of the charge and the petitioner was called upon to submit his explanation.

(d) The petitioner submitted a detailed explanation on 21.01.1986, running into 30 pages.

(e) The impugned order dated 20.03.1992 was passed after six years, which was served upon the petitioner on 10.04.1992 after his superannuation on 31.03.1992.

(f) Rule 68 of the Maharashtra Public Works Manual, 1970 mandates that any deficiency or defect in the work or the stores, taken over by the succeeding officer from his predecessor, should be brought to light within a period of six months in the case of the divisional charge and within a period of three months in the case of the sub-divisional charge. This rule precludes the respondent from initiating action after 8 years and 10 months.

6. The Tribunal, while considering the case of the petitioner, has merely relied upon Rule 10 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 with regard to the minor punishments/penalties. Rule 9 (3) was also considered while considering the contentions of the petitioner. Rule 5 was also considered while dealing with the quantum of punishment to be awarded. It was concluded that as no enquiry is

required for awarding a minor punishment, no interference is called for by the Tribunal, in the impugned order of punishment.

7. Learned A.G.P. appearing on behalf of the respondent State has strenuously defended the impugned judgment of the Tribunal dated 04.03.2008. It is vehemently submitted that since a loss was caused to the State on account of there being no accounting of 58.424 Metric Tonne of the Steel costing Rs. 1.28 Lakh, the State has proceeded against the petitioner in order to ensure that a guilty person would not escape the clutches of law. It is further stated that in matters of such nature, the Courts should be slow in interfering. An opportunity of hearing was given to the petitioner and only after considering his reply dated 21.01.1986 pursuant to the charge-sheet dated 28.01.1983, the impugned order has been passed. The Tribunal has rightly refused to interfere with the impugned order and hence this Petition deserves to be dismissed.

8. After considering the submissions of the learned Advocates for the respective sides, we have gone through the Petition paper book and the record available for deciding this case on the aspects set out below.

STALE CHARGE

9. We find that in this peculiar case, the issue of a stale charge being levelled upon an employee seeks our attention. The petitioner had handed over the charge as an Executive Engineer on 06.03.1974.

10. Rule 68 of the Maharashtra Public Works Manual assumes significance. For the sake of clarity Rule 68 is reproduced as under :-

“68. If the relieving officer fails to bring to notice within a period of 3 months in the case of the sub-divisional charge and 6 months in the case of divisional charge, any deficiency or defect in work or stores taken over from his predecessor, he will be responsible for the same, both as to quantify and quality, so far as he was in a position to ascertain it”.

11. The Hon'ble Apex Court, while dealing with the case of stale adverse entries in the matter of **Brij Mohan Singh Chopra Vs. State of Punjab, [(1987) 2 Supreme Court Cases 188]**, has concluded that stale adverse entries should not be raked up only for scuttling the promotional avenues of an employee.

12. This Court, in the matter of **Seema Ganpat More Vs. President/Secretary, Shishu Vikas Mandir, Daund and others, [2015 (4) Mh.L.J. 71]**, has dealt with a similar issue of stale charges being raked up against an employee resulting into awarding of punishment. The charge-sheet was issued in 2012 and it related to the acts committed in 1995 and 1996. This Court, therefore, concluded that stale charges cannot be a subject-matter of a charge-sheet.

13. Considering the law as is laid down, it is obvious that a charge which is of a stale character, cannot be levelled upon an employee. We are informed that after the petitioner received the charge-sheet on 28.01.1983, while performing his regular duties, he had taken efforts to go back to the place where he had performed his work at Wadigodri to consider the material as may be available for putting forth an explanation. It was practically after three years that he submitted his detailed

explanation on 21.01.1986, running into about 30 pages. It was after about 18 years from the date of the alleged incident that the impugned order of censure was passed.

14. We have gone through the impugned judgment of the Tribunal. We do not find that the Tribunal has applied its mind to the aspect of a stale charge. The Tribunal has merely relied upon the impugned order which, in our view, is quite cryptic in nature, while dismissing the Original Application filed by the petitioner. We also find that the Tribunal has merely taken into account that as a regular enquiry was not required to be conducted against the petitioner, no fault can be found with the impugned order.

MINOR OR MAJOR MISCONDUCT

15. We cannot agree with the conclusions of the Tribunal with regard to minor punishment being awarded and no enquiry being required. If the charge upon the petitioner was of the disappearance of 58.424 Metric Tonne of steel, which was priced at Rs. 1.28 Lakh as in March 1974 which is more than 40 years ago, we cannot accept the contention of the State that it was a minor charge requiring a minor punishment and hence a regular departmental enquiry was not initiated in the said charge. A charge of purported misappropriation of Rs. 1.28 Lakh in the year 1974 can be said to be a huge misappropriation, if the charge is proved. It becomes apparent to us that the State has not conducted a departmental enquiry against the petitioner as the charge was levelled after 8 years and 10 months and probably the State had no evidence available with it to

prove the charges against the petitioner.

16. We have considered the impugned order dated 20.03.1992 which was passed about 10 days prior to the superannuation of the petitioner (31.03.1992) and said to have been served upon the petitioner after his retirement on 10.04.1992. We find the impugned order to be cryptic and without any application of mind. In order to conclude that there has been a misappropriation of 58.424 Metric Tonne of Steel and keeping in view that the petitioner had tendered a written explanation running into 30 pages, we expect the State Authorities to apply their mind to the material before them and pass a reasoned order. The least that was expected was that the reasoned order of punishment should indicate that all the contentions of the petitioner and the evidence on record has been, at least *prima facie*, appreciated. Had that been so done, the State would have been required to pass a detailed order assigning reasons as to what is the evidence against the petitioner and why his explanation does not deserve consideration or needs to be rejected.

17. We find from the impugned order, which is in Marathi, that a single sentence is mentioned while rejecting the contention of the petitioner. The said Marathi sentence can be translated into English and which would read as under :-

“Upon considering the charge-sheet dated 28.01.1983 in the light of Maharashtra Civil Services (Discipline and Appeal) Rules 1971, Rule 10 and the reply submitted by the petitioner dated 21.01.1986 and on the basis of available documents and on applying careful mind to the

matter alongwith the annexure, the punishment of censuring deserves to be passed”

18. We have also considered the brief summary (undated) prepared by the Department with regard to the charges levelled upon the petitioner. The charge-sheet is reproduced in a concise form. So also the 30 pages of defence / explanation put-forth by the petitioner has been reproduced in two paragraphs. In a single paragraph conclusion, it is mentioned that as the record of the Stores Verification Unit indicates the loss of Steel, the charge levelled upon the petitioner can be said to be proved.

NO DEPARTMENTAL ENQUIRY

19. As noted above, we do not find that the charge levelled upon the petitioner, *ex facie*, could be said to be of a minor or a technical character, so as to conclude that he is guilty of the misappropriation on the basis of the show-cause notice and without conducting an enquiry.

20. It has been brought to our notice that the Accountant General of the State of Maharashtra at Nagpur had conducted three inspections for the audit periods from 1971 to 1975. For the sake of clarity the details about the said audit inspections are reproduced as under :-

Sr. No.	Period of Audit	Period of Inspection	Name of the Inspecting Accounts Officer
1	16.08.1971 to 30.11.1972	27.12.1972 to 03.01.1973	Shri P.C. Chakole
2	01.12.1972 to 31.12.1973	01.04.1974 to 09.01.1974	Shri P.C. Chakole
3	01.01.1974 to 31.03.1975	04.04.1975 to 16.04.1975	Shri P.C. Chakole

21. Despite the above inspections and audit reports by the Accountant General, no procedural lapses or loss of steel was noticed against the petitioner. He had handed over the charge of his Department to the succeeding officer on 06.03.1974 and the entire period of his functioning and thereafter till 31.03.1975, was subjected to the audit inspection and yet no irregularity was found against the petitioner.

22. In the light of the above factors which we have considered in the forgoing paragraphs, we find that the Maharashtra Administrative Tribunal had not gone into these aspects and had passed the impugned order rejecting the Original Application filed by the petitioner purely on the ground that since a minor punishment had been awarded, no enquiry was necessary for awarding such a minor punishment.

23. It cannot be ignored that the petitioner, who is about 84 years old today and is present in the Court, has instructed his learned Counsel to conduct these proceedings only for restoring his honour. He is not put to a loss of a single penny by the impugned order.

24. Considering the above and keeping in view that a stale charge was levelled and the impugned order was passed de-hors Rule 68 of the Maharashtra Public Works Manual applicable to the case of the petitioner, which has not been truly appreciated by the Tribunal, this Petition succeeds and is accordingly allowed.

25. The impugned judgment of the Tribunal dated 04.03.2008 is quashed and set aside and Original Application No.1127/1993 stands allowed. Consequently the impugned order of censure dated 20.03.1992 is quashed and set aside. Rule is made absolute accordingly.

(SUNIL K. KOTWAL)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE