

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 9587 OF 2016

1. The State of Maharashtra,
Through the Principal Secretary,
Agriculture, Animal Husbandry,
Dairy Development and Fisheries
Department, Mantralaya, Mumbai
400 032.

2. The Commissioner, Animal
Husbandry, Maharashtra State,
Central Building, Pune-1

3. The Accountant General (A & E),
Maharashtra State, 101, M.K. Road,
Mumbai-20.

**.....Petitioners
(Orig. Respondents)**

V/s.

Shri. Arun Manikrao Kharwadkar,
R/o-M-3/263, Shivgauri Co-op Hsg
Soc, Laxminagar, Parvati,
Pune-411 009.

**.....Respondent
(Orig. Applicant)**

Mr. Vishal Thadani, Advocate for the petitioners.

Mr. Sanjay Kshirsagar, Advocate for the respondent.

CORAM :- SMT. V.K. TAHILRAMANI, &

SANDEEP K. SHINDE, JJ.

DATED :- 13TH JULY, 2017.

JUDGMENT :- (Per :- SANDEEP K. SHINDE, J) :

1. The State of Maharashtra has preferred this petition against the judgment and order dated 21st November, 2015 passed by the Maharashtra Administrative Tribunal (MAT), Mumbai in Original Application No.876 of 2012 whereby :-

(i) departmental enquiry against the respondent herein (original applicant) has been quashed and set aside;

(ii) the State has been directed to proceed as if no departmental enquiry was ever initiated against the applicant; and held that the applicant is entitled to full benefits in every

respect and deductions, if any, made shall be refunded.

2. The State has challenged the 'jurisdiction' exercised by the Tribunal, in reviewing its administrative action in the instant petition.

3. That before the dealing with the grounds urged in the subject petition, we may place on record relevant facts, and orders passed by the State, as well as, by the judicial forums from time to time. The petitioner was appointed as a Government Servant on 13th November, 1970 in Animal Husbandry Department. On 26th March, 1997 chargesheet was laid against him for alleged irregularities committed by him during 1st June, 1989 to 8th July, 1991, when he was posted as Live Stock Development Officer (Technical Assistant). The charges were :

(i) the petitioner prepared the proposal for purchase of medicines without reviewing the stock of balance medicines for every year and mislead the superior authorities and thereby violated Rule 3 of the Maharashtra Civil Services (Conduct) Rules, 1979.

(ii) the petitioner has deliberately submitted a wrong proposal to purchase the medicines in violation of the Rules.

(iii) caused loss to the Zilla Parishad by purchasing medicines.

(iv) proposal was submitted before the budget of the Zilla Parishad was published and thereby violated the budgetary, as well as, financial norms.

(v) he submitted proposal for purchase of medicines though there was no technical sanction from the Competent Authority.

4. It appears, though the Enquiry Officer was appointed in August, 1997 enquiry actually progressed from May, 2001 and the Enquiry Officer submitted his report on 4th January, 2002. On 24th October, 2003 show cause notice, of compulsory retirement was issued to original applicant ("applicant" for short) in public interest under Rule 10(4) of the Maharashtra Civil Services (Pension) Rules, 1982. This notice was received by the applicant on 21st November, 2003. Thereafter, he made a representation against the said notice on 29th November, 2003. He had also challenged the notice in O.A. No.88 of 2004. The O.A. was disposed off on 22nd January, 2004 whereby the Competent Authority was directed to pass the order on the representation expeditiously and appellant services

were directed to be continued till that time.

. It is the applicants' case, that alongwith him, his superior officers, Dr. Dharmadhikari, District Animal Husbandry Officer and Dr. S. Karlekar, District Animal Husbandry Officer were chargesheeted on the alleged irregularities committed by them while procuring medicines for Zilla Parishad for the same period for which he has been chargesheeted. Applicant attained the age of super-annuation on 30th June, 2005, He was served with a show-cause notice dated 26th October, 2006 for punishment of 25% reduction in the pension with permanent effect. Applicant responded the same vide representation dated 2nd January, 2007. It is his case that, representation was not taken into consideration and the State issued order dated 3rd December, 2008 vide which the petitioner was saddled with the punishment of 25% reduction in the pension with permanent

effect. It appears, though the order was passed on 3rd December, 2008, it was served to the applicant on 20th September, 2010 and that too upon lot of efforts by him.

5. The order dated 3rd December, 2008 i.e. 25% reduction in the pension with permanent effect was challenged by the petitioner in August, 2011 in O.A. No. 740 of 2011. This O.A. was disposed off vide order dated 14th September, 2011 by passing the following order :-

“Having regard to the facts and circumstances of the case, we direct the Appellate Authority to decide the said Appeal, if any filed within two weeks from today, within three months thereafter. Needless to say, opportunity of personal hearing be given to the applicant before deciding the same. Original Application stands disposed off.”

6. That, in terms of the order dated 14th September, 2011 the applicant preferred an Appeal on 26th September, 2011 and referred to order passed by the Tribunal. That by letter dated 24th February, 2012 the applicant was informed that, Appeal was beyond the period of specified limitation and was called upon to give the reasons for the delay. Applicant supplied the reasons, and prayed for condonation of delay on the ground that the order dated 3rd December, 2009 (reduction in pension with permanent effect) was received by him on 20th September, 2010 and therefore could not prefer the Appeal within 45 days. It appears, the Appellate Authority did not decide the Appeal within two months as directed by the Tribunal and only after reminder by the applicant, Appeal was rejected by the Governor by order dated 20th June, 2012.

7. Being aggrieved by the order dated 3rd December, 2008 i.e. 25% reduction in pension with

permanent effect and order dated 20th June, 2012 passed by the Appellate Authority, applicant approached the Maharashtra Administrative Tribunal by filing O.A. No. 876 of 2012 wherein he prayed for :-

(i)that punishment order dated 3rd December, 2008 and the order dated 20th June, 2012 may kindly be quashed and set aside and direct the respondent, State to release all the payments which have been deducted from the pension of the petitioner, as well as, the arrears of pension as per Sixth Pay and pay all the consequential benefits such as interest on pensionary benefits from the date of retirement within such time as the Court may deem fit.

8. The claim of the applicant was granted by the Learned Member of the MAT vide order dated 21st November, 2015 as stated hereinabove. The State being aggrieved by the said judgment and order preferred this petition under Articles 226 and 227 of the Constitution of India.

9. That before addressing the issue/grounds raised by the State as about the jurisdiction of Tribunal to review the administrative order and scope of judicial review thereto, it may be stated that the applicant-respondent herein and his two superior officers Dr. Dharmadhikari and Dr. Karlekar were prosecuted by the State for the alleged misappropriation/irregularities committed by them in Regular Criminal Case No. 8019 of 1987. The record shows that, the applicant had applied for discharge from the case contending that, the material collected against him does not give rise to any suspicion for having committed the alleged offence. The Chief Judicial Magistrate, Aurangabad was pleased to discharge him from the case on merits. The Criminal Revision Application No. 170 of 2005 filed by the State was rejected vide order dated 13th February, 2002.

10. The principle question in the case in hand is, as to whether the Tribunal was justified in reviewing the administrative orders i.e. findings in enquiry and penalty of 25% reduction in the pension of the applicant with a permanent effect. In the case in hand, the findings recorded by the Enquiry Officer and the decision of the disciplinary authority has been set aside by the MAT. It is correct that, the jurisdiction of the MAT is not an appellate jurisdiction. It is also a settled law that, a possibility of mere existence of another point of view on the same set of facts, will not by itself be a ground to intervene or interfere with the order of administrative in nature, like the one in hand. It is also settled law that, strict codified procedural law is not applicable in case of departmental enquiries and it would be governed in accordance with the preponderance of probability and not proof beyond reasonable doubt. It is further settled, that the judicial forum which is scrutinising the material to make sure

that there was some incriminating material to justify the conclusion and therefore the judicial forum would not just for the asking rush in and interfere with the conclusions drawn by the authorities below. However, there are still principles of justice, fair play and good conscious that must be found in the impugned actions. Therefore, remaining within the constraints of jurisdiction, judicial forum still has to bear in mind that at the end of the day, justice must not be made to suffer.

11. Heard Learned AGP for the State and Learned Counsel for the respondent-original applicant. The Learned AGP would urge that, the Tribunal erred in interfering with the administrative order without there being material or compelling reasons and on that ground alone, the order impugned is required to be quashed and set aside. The Learned Counsel for the original applicant, respondent herein, however,

supported the order of the Tribunal.

12. We have perused the entire material placed on record. Before answering the issue raised by the State, it is necessary, to find out and ascertain whether there was convincing material on record to suggest that the respondent, applicant was not guilty of charge made against him. Equally, it is necessary to find out, as to whether the disciplinary authority has appreciated such convincing material, if any, and it is also necessary to find out if such material was not considered by the disciplinary authority in the process of concluding the charges against the petitioner, then, whether such omission and/or lapses would be a good ground to upset the findings recorded by the Enquiry Officer and whether the Tribunal was justified in reversing/interfering in administrative orders.

13. Before addressing this issue, it may be stated

that the Tribunal has relied on the following material of which notice was not taken by the authorities below nor such material was referred to while concluding the charges against the applicant in the departmental enquiry. Such material is,

(i) the affidavits of Dr. M.B. Dharmadhikari and Dr. D.S. Karlekar, co-delinquent and eventually the officers superior to the petitioner, wherein they stated that, they had given instructions to the petitioner to prepare the proposals as per Rule (3) of the Maharashtra Civil Services (Conduct) Rules, 1979,

(ii) a letter dated 5th February, 1991 as per which the District Animal Husbandry Officer is totally responsible for violation of the rules/lapses etc, in purchase of medicines,

(iii) the enquiry report against Dr. Dharmadhikari wherein finding is recorded that Dr.

Dharmadhikari was 100% responsible for the purchases and lapses during that period.

(iv) order of the Chief Judicial Magistrate, Aurangabad in R.C.C. No.80119 of 1997 whereby the petitioner was exonerated/discharged from the said criminal case.

(v) judgment and order in Criminal Revision Application No. 170 of 2005 filed by the State against the order of the Chief Judicial Magistrate and the findings recorded therein, particularly paras-10 and 11 read as under :-

“10. The aforesaid record and statements show that the witnesses have not contended that the record was dishonestly prepared by Dr. Kharwadkar. On the contrary, they show that some medicines were received in excess than the quantity shown in the register of Zilla Parishad. The actual value of medicines which

were not supplied by Dr. Kharwadkar is not given in sanction order and the total value of the medicines distributed and not found in the centers is given in the sanction order. Thus, as against each officer very small amount is shown and in view of the aforesaid irregularities appearing in the registers, even at this stage it cannot be believed that there was dishonest intention or misappropriation of some medicines mentioned in the sanction order.

11. *It is unfortunate that when there are specific allegations against higher authority about misuse of fund of Zilla Parishad and of irregularities committed, the attention was diverted to others and allegations are made against the Doctors that some medicines were not reached to the centers. The statements show that there was no alternative before the officers entrusted with disbursement of the medicines received to distribute the medicines at the centers even when the centers had not asked for the same. Easy inference could not have been drawn that as per the directions of the superior officers it was done. Nothing can*

be achieved by asking the accused to face the trial on the basis of aforesaid material. So, I hold that that CJM has not committed any error in discharging the accused and by answering point in the affirmative, I pass the following order."

14. We have perused the aforesaid material including the orders passed in the judicial proceedings. No doubt that, merely because the petitioner was discharged in the criminal proceedings, may be under the same set of facts, that by itself will not exonerate him or would dis-entitle his employer to proceed in the departmental enquiry against him. In the case in hand, besides the judicial orders, there were affidavits on record filed by the co-delinquents who were eventually the officers superior to the petitioner in hierarchy, had stated on oath that the petitioner had prepared the proposal at their instance. Yet, there was another piece of material in the form of the finding of the enquiry officer as against Dr. Dharmadhikari wherein he was

held responsible for the purchases of the medicines. This finding was not disturbed by the Tribunal in the proceedings taken up by Dr. Dharmadhikari in O.A. No.819 of 2014 preferred by him against enquiry report and consequential orders. Thus, the cumulative effect of the affidavits and the findings of the Enquiry Officer (against Dr. Dabohalkar in his enquiry) coupled with the findings/observations in the criminal revision proceedings were totally ignored by the disciplinary authority as it appears from the record and the order of the Tribunal.

. At this juncture, the Learned Counsel for the petitioners has brought to our notice the finding of the enquiry officer wherein, he stated that, all the charges were “more or less proved”. The exact words are :-

“हे सर्व आरोप जवळपास सिद्ध होत
असल्यामुळे उॉ. अ. म. खारवडकर
नियम 3 चा भंग केल्याने सिद्ध होत
असल्यामुळे..... सर्व बाबतीत मुख्य अधिकारी

યાંની માન્યતા અસલ્યાને યા પ્રક્રિયેસ મી
જબાબદાર નાહી અસે જરી ત્યાંની નમૂદ કૈલે
અસલે તરી યા પ્રક્રિયેત કાહી અંરિ નિરચીતચ
જબાબદાર આહે.”

15. We have perused the enquiry report, as well as, the order passed by the disciplinary authority. The enquiry officer has not held the charges against the applicant as “proved”. From the observations reproduced hereinabove, it can be said with certainty that, the enquiry officer himself was not sure as about the charges whether stands proved or not. The disciplinary authority had not at all looked into this aspect and proceeded to hold the charges were proved.

16. That looking into the facts of the case and the reasons given by the Tribunal while allowing the said O.A. of the respondent, (original applicant) we do not find any irregularity and/or error being committed by the Tribunal in exercise of the jurisdiction while setting

aside the findings recorded by the Disciplinary Authority. The Tribunal in its reasoned order has dealt with the aspects and the material which was available before the authorities below for consideration before concluding the charges against the petitioner. Besides, the finding recorded in the judicial proceedings and in particular, findings at paras-10 and 11 in the criminal revision proceedings has attained the finality. That for the aforesaid reasons, we hold that the Tribunal has neither substituted its own view over the views of the Appellate Authority nor committed error in entering into the merits of the respondent's appeal.

17. That before concluding this judgment, it may be stated that the Tribunal vide order dated 14th September, 2011 directed the Appellate Authority to decide the appeal within three months. The record shows that, the petitioner's appeal to the Appellate Authority was not decided and as such extension was

sought by the Government on the ground that original record pertaining to the order dated 31st December, 2008 was not available. The Tribunal therefore extended the period to decide the Appeal. However, it appears that, the petitioner was informed vide letter dated 24th February, 2012 that his Appeal was not filed within 45 days. The petitioner, thereafter, vide letter dated 29th March, 2012 prayed for condonation of delay on the ground that the order dated 3rd December, 2008 (reduction in pension with permanent effect) was received by him on 20th September, 2010 and therefore he could not have preferred the appeal within 45 days from the order dated 3rd December, 2008. Admittedly, the petitioner's appeal was not heard either by granting him opportunity of hearing nor on merits but it got dismissed on the ground that the Appeal was preferred beyond limitation of 45 days and petitioner has not pointed out the authenticate reasons for the same. It was a strange approach of the Appellate Authority for a

simple reason that, order imposing 25% slash in the pension though passed on 3rd December, 2008, it was served upon the petitioner by the respondent, State on 20th September, 2010. On this set of admitted facts, the order passed by the Appellate Authority cannot sustain. That even otherwise, we have concluded that the order of the MAT interfering with the finding recorded by the disciplinary authority cannot be faulted with. That, after taking a survey of events, as narrated hereinabove, it is evident that the departmental enquiry was conducted in relation to the irregularities allegedly committed during the year 1989 to 1991. The applicant herein, has retired in June, 2005. In December, 2008 punishment was inflicted, however, copy thereof was supplied to the applicant in the year 2002. Taking into consideration, the facts of the case and the manner in which the enquiry was held and proceedings adopted by the State against the applicant, we do not see any reason to remand the Appeal to the Appellate Authority

for fresh hearing as contended and urged by the State Counsel. That for the aforesaid reasons, the writ petition is dismissed with no order as to costs. Rule is discharged.

(SANDEEP K. SHINDE, J)

(SMT. V.K. TAHILRAMANI, J)