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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 208 OF 2015

1. State of Maharashtra
The Secretary
School Education and Sports Department
Mantralaya, Mumbai.
 2. Director of Sports and Youth Services
(presently changed as Commissioner,
Sports and Youth Services), Pune.
 3. The Deputy Director of Sports and Youth
Services, Aurangabad.
 4. The Commanding Officer
52, Maharashtra Battalion, NCC, Nanded ...Petitioners
(Original Respondents)
- Vs.

Shaikh Abdul Khaja Miyan
At Post Wadehuri, Taluka Loha,
District: Nanded. ...Respondent

Mr. N.C. Walimbe, AGP for the State/Petitioners
Mr. Nitin P. Dalvi, Advocate for the Respondent

**CORAM : SMT. V.K. TAHILRAMANI, &
M.S. KARNIK, JJ.
DATED : 2ND MAY, 2017**

ORDER [PER M.S. KARNIK, J.]

1. The Petitioners State of Maharashtra are challenging an order dated 28th November, 2013 passed by the Maharashtra Administrative Tribunal, Mumbai Bench, Mumbai allowing the Original Application No. 242 of 2013 (for short OA) filed by the Respondent. The Tribunal allowed the OA in terms of prayer clauses 9(B) and 9(C) which reads thus:

“9(B). To quash and set aside the enquiry conducted in case of Applicant and the termination order dated 22.6.1994.

9(C). The respondent be directed to reinstate in services with continuity of services and fullback wages from 22.6.1994”

2. The Respondent filed OA before the Tribunal on the following facts which in brief are as under:

(a) The Respondent was appointed in the year 1983 as a Peon (Class-IV) by an order dated 21st November, 1983. Some time

in the year 1984 when the Respondent was performing the duties of Peon he was asked to prepare pay bills, supplementary and GPF bills etc. of the employees working in the office of the Petitioner No.4.

(b) On 3rd March 1994 the Respondent came to be arrested on a complaint lodged by the Petitioner No.4 in Shivajinagar Police Station, Nanded on the allegation that the Respondent made false signature and prepared fabricated documents and thus withdrawn an amount of Rs.71,204/-. The Respondent was in custody for more than 48 hours and therefore, by an order dated 24th February 1994 he was suspended. A chargesheet dated 8th April, 1994 was served on the Respondent. According to the Respondent no list of witnesses was supplied along with the chargesheet and therefore the same was contrary to the Rules.

(c) According to the Respondent the enquiry officer held only two sittings, firstly on 29th April, 1994 and thereafter on 10th May, 1994. As the Respondent had admitted in writing his misconduct before various independent witnesses who are officers

of the Petitioners on 8th January, 1994, 7th January, 1994, 28th January, 1994, 31st January, 1994, 23rd February, 1994 and ultimately on 10th May, 1994. On 10th of May 1994 itself, which was the second day fixed for holding the enquiry, the enquiry officer submitted his report. Based on this report the termination order dated 22nd June, 1994 was passed terminating the services of the Respondent.

(d) Against the order of termination the Respondent filed a departmental appeal. The said appeal was rejected on 25th November, 2004.

(e) The criminal case filed against the Respondent resulted in his acquittal by the judgment and order dated 9th October, 2003 passed by the Chief Judicial Magistrate, Nanded.

(f) The Respondent filed OA No. 209 of 2004 challenging the order of termination dated 22nd June, 1994. The OA No.209 of 2004 came to be dismissed by the Tribunal by order dated 15th March 2011.

3. The Respondent filed Writ Petition No. 9490 of 2011 before this Court and by the order dated 22nd June, 2012 this Court was pleased to remand the matter back to the Tribunal. The impugned order dated 15th November, 2003 passed by the Tribunal was set aside. This Court granted liberty to the Respondent to bring additional documents on record and after extending opportunity to the parties the Tribunal was directed to consider the impact of those documents on departmental enquiry. It is material to reproduce the relevant portion of the order dated 22nd June, 2012 passed by this Court in Writ Petition No. 9490 of 2011.

“4. It is in this background, that effort of Advocate Shri Deshpande to substantiate his contention that after receipt of new documents present petition has been filed, needs to be appreciated. Those new documents are annexed with the petition and those contain a statement dated 10.5.1994 of Lt. Colonel V.K. Sharma, Commanding Officer, that the petitioner was ill-treated and assaulted for forcing him to admit misconduct. One of the documents produced shows that on 29.4.1994, petitioner himself has complained to the enquiry officer

about severe beating to him, loss of teeth sustained by him, fracture suffered by him and assault on his mother. These documents are not specifically dealt with or denied by Respondents No. 1 to 3 in reply to present petition. Admittedly, these documents could not be looked into by the Administrative Tribunal because the same were then not produced.

5. Perusal of the enquiry proceedings dated 29.4.1994 show that on that day, preliminary statement of the petitioner was recorded and he denied the charges. He was given time till 5.5.1994 to nominate his defence assistant and enquiry was adjourned to 10.5.1994. The proceedings recorded show that the petitioner came to the office on 5.5.1994 and disclosed his intention to admit misconduct. He mentioned that on 29.4.1994 he had denied charges as per legal advice. He also declared that he had indulged in misconduct for which he was repenting and hence, without proceeding further in the matter he wanted to admit misconduct. He was advised to come on scheduled date i.e. 10.5.1994. Accordingly, his statement has been recorded on 10.5.1994.

6. If the enquiry officer had before him the communication dated 29.4.1994 regarding severe beating not only to the petitioner, but also to his mother, as well

the statement of denial of charges on 29.4.1994 itself, we find it very difficult to understand how the admission given on 10.5.1994 could have been acted upon. However, as the Tribunal was not required to go into all these aspects, we are not concluding the same. We have noted that the documents have not been disputed before us.

7. In this situation, we find it appropriate to give petitioner an opportunity to point out these documents and its impact on departmental enquiry to the Administrative Tribunal.

8. Only for that purpose, without making any observations on merits of the controversy, we quash and set aside the impugned order dated 15.3.2011 passed by the Tribunal in Original Application No.209 of 2004. That application is restored back to the file of the Administrative Tribunal. The petitioner shall move proper application before the Tribunal seeking leave to produce additional documents and if the Tribunal is satisfied, it shall permit those documents to be filed on record and thereafter, after extending opportunity to the parties, the Tribunal shall consider impact of those documents on the departmental enquiry. We hope, the Tribunal shall complete this exercise at the earliest”.

9. With aforesaid observations and directions, writ petition is disposed of. No costs”.

4. The Tribunal pursuant to the remand decided the matter afresh. The Tribunal arrived at a finding that the Respondent was forcibly made to plead guilty before enquiry officer on 10th May 1994 on the basis of the additional documents produced. According to the Tribunal, the Petitioner No.4 Lt. Colonel V.K. Sharma has clearly admitted in his writing dated 10th May, 1994 that he had assaulted both the Respondent as well as his mother to compel the Respondent to plead guilty before the enquiry officer. The Tribunal further held that there is no dispute that the enquiry officer found the Respondent guilty solely on the Respondent's plea of guilt before the enquiry officer on 10th May 1994. It further noted that the Petitioner No.4 had not chosen to deny the averments pointing out the gross conduct of the Petitioner No.4. The Tribunal thus concluded that the departmental enquiry initiated against the Respondent was complete farce and he has been acquitted in the criminal case. The OA is thus allowed in terms of clauses 9(B) and 9(C).

5. In our opinion the Tribunal has completely misconstrued the order passed by this Court in Writ Petition No.9490 of 2011. In this context it is material to refer to the relevant provisions of the Rules. In exercise of the powers conferred by the provisions of Article 309 of the Constitution of India, the Governor of Maharashtra has made the “the Maharashtra Civil Services(Discipline and Appeal) Rules, 1979 (hereinafter referred to as the said Rules for short). Rule 5 provides for the penalties which may be imposed on a government servant. Rule 8 provides for the procedure for imposing major penalties. Relevant provisions of Sub-Rule 6,9,10 & 25 of Rule 8 provide thus:

“(6) The disciplinary authority shall where it is not the inquiring authority, forward to the inquiring authority -

(i) a copy of each of the articles of charge and the statement of the imputations of misconduct or misbehaviour;

(ii) a copy of the written statement of defence, if any, submitted by the Government servant;

- (iii) copies of statements of witnesses if any, referred to in sub-rule (3) of this rule;*
- (iv) evidence proving the delivery of the documents referred to in sub-rule(3) to the Government servant; and*
- (v) a copy of the order appointing the presenting Officer.*

(9) If the Government servant who has not admitted any of the articles of charge in his written statement of defence, or has not submitted any written statement of defence, appears before the inquiring authority, such authority shall ask him whether he is guilty or has any defence to make and if he pleads guilty to any of the articles of charge, the inquiring authority shall record the plea, sign the record and obtain signature of the Government servant thereon.

(10) The inquiring authority shall return a finding of guilt in respect of those articles of charge to which the Government servant pleads guilty.

(25) After conclusion of the inquiry, a report shall be prepared by the inquiring authority, such report shall contain -

- (a) the articles of the charge and the statement of the imputations of misconduct or misbehaviour;*

- (b) the defence of the Government servant in respect of each article of charge;*
- (c) an assessment of the evidence in respect of each article of charge;*
- (d) the findings on each article of charge and the reasons therefor;*
- (e)”.*

Rule 9 of the said Rules provides for the action which is required to be taken on the enquiry report.

6. As the Respondent admitted his guilt on 10th May, 1994, the charges against him were found proved and punishment was imposed as per the procedure provided.

7. It is a settled law that in a departmental proceeding what is of ultimate importance is the finding of the disciplinary authority. As such when enquiry is conducted by Inquiry officer, his report is not final or conclusive and the disciplinary proceedings do not stand concluded with the completion of the enquiry. The disciplinary procedure stands concluded with the disciplinary authority. The factual findings of the disciplinary authority are, however, not open

to challenge and the power of judicial review does not extend to examining the correctness or truth of the charges. While exercising powers of judicial review the Courts cannot embark upon an appreciation of evidence and arrive at a conclusion of its own on the sufficiency of the evidence or on the correctness of the conclusion which is based on such evidence. In a case where an infirmity vitiates a disciplinary proceeding, the Court would set aside the order of dismissal and direct that the inquiry proceeding be relegated to the stage where the infirmity crept in.

8. As discussed earlier the new documents which were produced for the first time before the High Court were admittedly not before the enquiry officer. Rule 8 of the said Rules provides a detailed procedure for conducting the enquiry in such matters where the Government servant does not admit the Articles of charge.

9. Admittedly new documents were produced by the Respondent for the first time in WP 9490/2011. These documents contain a statement dated 10th May, 1994 of Lt. Colonel V.K. Sharma Commanding Officer that the Respondent was ill-treated and

assaulted for forcing him to admit misconduct. Another document produced shows that on 29th April, 1994, the Respondent himself has complained to the enquiry officer about severe beating to him, loss of teeth sustained by him, fracture suffered by him and assault on his mother. This Court while passing the order dated 22nd June, 2012 observed that these documents could not be looked into by the Administrative Tribunal because the same were then not produced. It is in this context that this Court found it appropriate to give to the Respondent an opportunity to point out these documents and its impact on departmental enquiry. This Court in these circumstances quashed and set aside the order dated 15th March, 2011 passed by the Tribunal without making any observations on merits of the controversy. This Court further directed the Respondent to make an application before the Tribunal seeking leave to produce additional documents and if the Tribunal is satisfied, the Tribunal was to permit those documents to be filed on record and thereafter, after extending opportunity to the parties, the Tribunal was required to consider the impact of those documents on the departmental enquiry.

10. This Court had thus remanded the matter back to the Tribunal for considering the impact of new documents produced on the departmental enquiry. We find that the Tribunal has instead of considering impact of the documents on departmental enquiry virtually appreciated these documents as a fact finding authority of the first instance.

11. The charges levelled against the Respondent are serious in nature. The Respondent is now taking a stand based on the additional documents that he was forced to admit his guilt on 10th May, 2016. The additional documents are of 29th April, 1994 and 10th May, 1994. The said documents are of the period prior to the termination dated 22nd June, 1994. For the first time these documents are produced by the Respondent in Writ Petition No. 9490 of 2011. It is pertinent to note that the documents of 1994 are produced by the Respondent for the first time almost after 17 years in 2011 alongwith the Writ Petition.

12. Admittedly, these documents which were brought on record by the Respondent for the first time in WP No. 9490 of 2011 were

not before the enquiry officer. Based on the material before the enquiry officer and the admission of guilt by the Respondent on 10th May, 1994, the enquiry officer submitted his report whereupon the disciplinary authority passed the order of termination. The Tribunal in these circumstances could not have rendered finding of fact based on the new documents which were never before the enquiry officer in the first instance. The Tribunal was not justified therefore in interfering with the enquiry proceedings based on the documents which were never before the enquiry officer during the course of disciplinary proceedings.

13. In this view of the matter, order passed by the Tribunal is set aside. The OA No. 242 of 2013 is restored back to the file of Tribunal. We are informed that presently no Bench is available at Aurangabad to hear the OA and therefore the Petitioner's Counsel requested that the OA be heard by Mumbai Bench itself. The said request is not opposed by the learned A.G.P. The OA is of the year 2004. The impugned order passed by the Tribunal is by Mumbai Bench as even at that time the Bench was not available at Aurangabad. It is in these peculiar circumstances and in the

interest of justice we request the Tribunal to hear the OA at Mumbai Bench itself. As we find that the Tribunal has not decided the matter in terms of order dated 22nd June, 2012 passed in WP No. 9490 of 2011, in the interest of justice, we deem it appropriate to remand the matter back to the Tribunal for hearing OA afresh on its own merit. We may not be understood to have made any observation on the merits of the controversy and therefore we are keeping all the contentions open. Hence, the following order.

ORDER

- i) The order dated 28th November, 2013 passed by the Tribunal in OA No. 242 of 2013 is quashed and set aside.
- ii) OA No. 242 of 2013 is restored back to the file of Administrative Tribunal with direction to decide OA afresh in terms of order dated 22nd June, 2012 in WP No. 9490 of 2011.

iii) It is requested that OA may be decided expeditiously and as far as possible within a period of 4 months from today.

All the contentions of the parties on merits are kept open.

(M.S. KARNIK, J.)

(SMT. V.K. TAHILRAMANI, J.)