

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

WRIT PETITION NO. 4192 OF 2018

The State of Maharashtra & others. Petitioners.

Versus

Kamlakar Devidas Rajhans. Respondent.

WITH

WRIT PETITION NO. 4193 OF 2018

The State of Maharashtra & others. Petitioners.

Versus

Smt. Usha Suresh Tiwane. Respondent.

Mr. S.B. Yawalkar, A.G.P. for petitioners in both petitions.

Mr. A.S. Deshmukh, Advocate for both the respondents.

**CORAM : S.V. GANGAPURWALA &
SUNIL K. KOTWAL, JJ.**

Dated : 5th June, 2018.

ORAL ORDER :-

1. The respondents had filed Original Application before the Maharashtra Administrative Tribunal challenging their termination. The Original Application is allowed. Aggrieved thereby, the State has filed the present Writ Petitions.

2. Mr. Yawalkar, learned A.G.P. submits that the Tribunal committed an error in appreciating the record. The notices were issued to the witnesses for remaining present on 14.01.2011. Pursuant to the notices, witnesses were present on 14.01.2011. The evidence of six witnesses was recorded, after the Videographer had left. Learned A.G.P. submits that the Roznama maintained by the Enquiry Officer clarifies that the statements were recorded and the application filed by the respondents to stay the enquiry was rejected. No *mala fides* can be attributed. The respondents were deliberately protracting the enquiry. All these aspects have not been considered by the Tribunal in its correct perspective.

3. Mr. Deshmukh, learned Counsel for the respondents in both these Writ Petitions submits that a false record is created of the statements being recorded by the witnesses. Upto 1.30 p.m. not a single statement was recorded. Upto 10.45 p.m. Enquiry Officer had not attended the Police Station. The Tribunal has considered all these aspects in detail and has arrived at correct conclusion.

4. We have considered the statements. The Tribunal while allowing the Original Application on the ground that the departmental enquiry was not fairly conducted and opportunity was not given to the respondents, has set aside the punishment and has granted opportunity for conducting the enquiry afresh.

5. The Tribunal, in its order, has observed thus :

“32. Statement of Police Constable Jayant Choudhary, who was assigned the work of video recording of the departmental enquiry proceedings has been recorded, copy of which is at paper book page 110. He has specifically stated that on that date he recorded video shooting of the proceedings but he noticed that nothing abnormal happened during the proceedings, and therefore, he deleted the recording of the said video shooting. He has stated that he recorded incident of 4 to 5 minutes, in which, there was talk between the Enquiry Officer and the delinquent applicants. It shows that no evidence or statements of witnesses had been recorded in his presence. Not only this, but on going through the report of Jayant Choudhary (page 102 & 103) it reveals that the statement of anybody has not been recorded on that date by the Enquiry Officer. Entries in Station diary filed at paper book page 98 also shows that the Enquiry Officer left Police Station premises at 01.30 p.m. for attending a Crime Conference. This fact is also supported by the entries in the weekly diary maintained by the Enquiry Officer and then Police Inspector (paper book page 105). He has specifically mentioned therein that he conducted departmental enquiry in between 11.00 a.m. to 01.30 p.m., and thereafter, he attended Namaaz bandobast from 01.30 p.m. to 02.00 p.m. and then he attended Crime Conference during 02.00 p.m. to 05.05 p.m. Thereafter, he was on patrolling duty from 06.30 p.m.

to 10.45 p.m. It means after 01.30 p.m. work of departmental enquiry had not been conducted by the Enquiry Officer. Till 01.30 p.m. applicants as well as Police Constable Shri Jayant Choudhary were present and during that period statement of none of the witnesses has been recorded. However, the enquiry report shows that the Enquiry Officer recorded statements of 6 witnesses out of 15 witnesses on that day and he has given opportunity to the applicants to cross-examine them but the applicants have not availed this opportunity. These documents and circumstances show that the Enquiry Officer has prepared the documents showing that he recorded statements of 6 witnesses on 14-01-2011 with ulterior motive and intentionally. On the basis of said documents, the Enquiry Officer had prepared report dated 10-03-2011. On the basis of the said report, respondent no.4 passed the impugned order dated 16-07-2011 removing the applicants from the services.

33. On considering the above said documents, it is crystal clear that the enquiry conducted by the Enquiry Officer was not conducted in free and fair manner. Witnesses were not examined by him on 14-01-2011 but he prepared false record in that regard. Fair opportunity was not given to the applicants to defend themselves on 14-01-2011 and thereafter also. The Enquiry Officer conducted the enquiry in haste and submitted his report to the respondent no.4 without giving proper opportunity to the applicants to defend themselves. Enquiry Officer had not waited till filing

final defence statements of the applicants. All these facts show that the Enquiry Officer conducted the enquiry proceedings with ulterior motive and in biased manner and with prejudiced mind and submitted his report to respondent no.4".

6. The discussion in the impugned judgment clearly shows that after 1.30 p.m. the Enquiry Officer did not attend the police station and upto 10.45 p.m. he was engaged in other work and till 1.30 p.m. the respondents as well as Police Constable Jayant Choudhary (Videographer) were present, and during that period statement of none of the witness was recorded.

7. Considering the aforesaid aspect, the Tribunal has arrived at the plausible conclusion that the statements of these six witnesses are not recorded in presence of the respondents and those statements may not have been recorded on 14.01.2011.

8. Considering the above conspectus, we do not find any error in the order passed by the Tribunal.

9. The petitioners have already filed their defence to the charges. In view of that the departmental enquiry, instead of being conducted afresh, shall proceed from the stage of recording of evidence of the witnesses. Needless to state, the respondents will have right to cross examine the said witnesses. The respondents shall remain present before the Enquiry Officer on 20.06.2018. The

enquiry shall be completed within three months from the date of appearance. The petitioners shall reinstate the respondents within a period of 15 days from today.

10. With the aforesaid observations, the Writ Petitions stand disposed of. No costs.

(SUNIL K. KOTWAL)
JUDGE

(S.V. GANGAPURWALA)
JUDGE

vdd/