

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

25 WRIT PETITION NO. 5010 OF 2017

MANSOOR SHAFI KHAN
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Mr. Sakolkar Vijay G.
AGP for Respondents 1 to 5 : Mr. A.P.Basarkar

CORAM : S.V.GANGAPURWALA
AND
SUNIL K.KOTWAL, JJ.

DATE : JUNE 12, 2018

O R D E R :

Mr. Sakolkar, learned counsel for the petitioner submits that the Tribunal failed to consider the matter on merits in its correct perspective. It ought to have been considered that the guilt as against the petitioner is not proved. The petitioner was discharging his duties diligently and is recipient of six medals during his tenure. According to the learned counsel, disciplinary inquiry was initiated. The preliminary inquiry was conducted without notice to the petitioner. The report was submitted by the inquiry officer and he came to the conclusion that unauthorized

absence is not proved and the inquiry officer recommended imposition of minor penalty i.e. stoppage of annual increment for a period of two years and for treating the leave period as without pay, however, the disciplinary authority issued show cause notice as to why the petitioner should not be removed from service. The petitioner submitted his reply, however, the disciplinary authority imposed punishment of compulsorily retiring the petitioner from service.

2. In appeal, the said order was confirmed. In second appeal, the appellate authority went further and imposed punishment of dismissal from service. The petitioner filed Original Application before the Tribunal. The Tribunal only considered the punishment imposed by the disciplinary authority setting aside the punishment of second authority, however, did not consider the case of the petitioner on merits. The punishment imposed is

disproportionate.

3. Learned AGP supports the order.

4. We have considered the submissions canvassed by the respective parties.

5. The second appellate authority certainly in an appeal filed by the petitioner should not have imposed higher punishment of dismissal from service. The disciplinary authority has exercised its powers and imposed lesser punishment of compulsorily retiring the petitioner.

6. It would appear that on conclusion of inquiry, it has been held by the inquiry officer that the charge of unauthorized absence from duty for the period from 27.11.1999 to 20.2.2001 is established, which amounts to breach of discipline on the part of the petitioner. Unauthorized absence for the said

period has been proved. The said aspect has been considered.

7. The jurisdiction of this Court in re-appreciating the evidence in disciplinary proceedings would be in a narrow compass. This Court would not sit in appeal over the decision taken, however, would be concerned with due adherence of the decision making power.

8. The Tribunal has considered these aspects of the matter in proper and reasonable manner.

9. In view of above, no case for interference is made out. Writ Petition is disposed of. No costs.

[**SUNIL K.KOTWAL, J.**] [**S.V.GANGAPURWALA, J.**]

dbm

