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

WRIT PETITION NO.318 OF 2004

Bapu s/o Bhagaji Kale,
Age: 67 years, Occu: Nil,
R/o. Ganpati Galli, Sailu,
Tq. Sailu, Dist. Parbhani

..PETITIONER

VERSUS

1. The State of Maharashtra,
Through the Secretary,
PWD Mantralaya, Mumbai

2. The Under Secretary,
PWD Mantralaya, Mumbai

..RESPONDENTS

Mr C. S. Kulkarni, A.G.P. for respondents

**CORAM : PRASANNA B. VARALE
AND
S. M. GAVHANE, JJ.**

DATE : 4th June, 2018

ORAL ORDER:

None for the petitioner.

2. Perusal of the record shows that the petitioner was before this Court challenging the order dated 25th September, 2003, passed by the learned Member, Maharashtra Administrative Tribunal, Bench at Aurangabad, in Original Application No.39 of 2003 and the order dated 5th March, 2002, issued by respondent No. 2 i.e. Under Secretary, PWD Mantralaya, Mumbai.

3. While granting Rule by an order dated 20th January, 2004, this Court could not find any favour with the petitioner for the prayer of interim relief and the same was rejected in clear and specific words.

4. Perusal of the record further shows that the petition was dismissed for non-prosecution on 1st September, 2015 and was restored by allowing application dated 7th June, 2016, by an order dated 1st September, 2017.

5. Today, none present for the petitioner. Learned A.G.P. appearing for respondents, by inviting our attention to the order passed by the Tribunal, submitted that the learned Member of the Tribunal dealt with the grounds raised before it, in the application, in challenge to the action by the respondent-authority. The perusal of the order passed by the Tribunal shows that the petitioner was working as Deputy Engineer in PWD Sub-Division, Bhokardan and the disciplinary authority found that he had committed certain mis-deeds. Accordingly, the departmental enquiry was initiated against him calling procedural and administrative formalities were followed. As many as eight charges were levelled against him.

6. Learned Member of the Maharashtra Administrative Tribunal found that the ultimate finding recorded by the Enquiry Officer was on appreciation of the material in the form of documents as well as oral

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evidence. Though it was submitted before the Tribunal that the Enquiry Officer reached to the findings only by accepting the submission of the department, the learned Member of the Maharashtra Administrative Tribunal found that there was no perversity in the ultimate decision of the Enquiry Officer. Merely because the decision was not in favour of the petitioner, the order could not have been termed as a perverse order and as such, the Member was not inclined to accept the prayer for interference in the findings of the Enquiry Officer. Learned Member of the Tribunal also found that there was observance of principles of natural justice. The petitioner was granted all the opportunities to examine the witnesses and produce the material in support of his claim.

7. Learned Member also could not find any favour in the submission that there was no proper consultation with the Maharashtra Public Service Commission. Learned Member then found that the ultimate punishment awarded was disproportionate. He was pleased to observe that the petitioner had put in nearly 25 years of service and awarding of extreme penalty of dismissal of services was not justified. Learned Member, being conscious of the limitation was pleased to observe that it is only open for the Tribunal to substitute its own view regarding punishment straight way by quashing the order of punishment. Tribunal can only direct the appointing authority to review its decision of punishment taking into consideration observations made by the Tribunal in case if Tribunal finds punishment awarded is

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unconscionable and disproportionate. Accordingly, the Member was pleased to interfere only in the issue of the punishment and by maintaining the findings of the Enquiry Officer, directed the appointing authority to reconsider the question of punishment and then award appropriate order of punishment, within three months from the receipt of the writ. Resultantly, Rule was made absolute.

8. Considering above referred observations of the learned Member, we are of the view that no error is committed by the Tribunal. The view taken by the Tribunal was just and proper. It seems that the petitioner is not interested in prosecuting the petition. The petition is, thus, dismissed for the above stated reasons.

(S. M. GAVHANE, J.)

(PRASANNA B. VARALE, J.)

sjk