

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4328 OF 2016

Madhukar Anandrao Pahunkar

.. **Petitioner**

Versus

The State of Maharashtra and others .. **Respondents**

Mr. Chandrakant K. Shinde, Advocate for the
Petitioner.

Mr. V. S. Badakh, A.G.P. for Respondent No. 1.

Mr. Yugant R. Marlapalle, Advocate for Respondent
Nos. 2 and 3.

CORAM: S. V. GANGAPURWALA &
R. G. AVACHAT, JJ.

DATE: 17th DECEMBER, 2018

PER COURT :

1. Mr. Shinde, learned Advocate for the
petitioner submits that at the relevant time the
petitioner was working as 'Junior Clerk'. The
departmental enquiry was initiated against him, so
also, criminal case was filed on the charge of
accepting gratification. The learned Advocate
submits that upon conclusion of the departmental
enquiry, the enquiry report was submitted by the

enquiry officer to the disciplinary authority, however the petitioner was not given copy of the enquiry report. The petitioner was convicted in the criminal case on 29.07.2003. The learned Advocate submits that though the departmental enquiry was concluded and the report was submitted by the enquiry officer on 26.07.1999, the disciplinary authority issued show cause notice dated 11.08.2004 as to why the petitioner should not be dismissed from service on the basis of the conviction in the criminal case. No decision was taken for nine years and only on 29.01.2013 based on the conviction in the criminal case and the departmental enquiry the petitioner was terminated from service. No second show cause notice was issued pursuant to the disciplinary enquiry. Principles of natural justice are flouted. The departmental enquiry cannot be kept pending for such long time. After issuance of the show cause notice on 11.08.2004, the decision has been taken on 29.01.2013 on this count itself the order of

dismissal deserves to be set aside.

2. The learned Advocate further submits that neither the petitioner was served with the copy of the enquiry report nor any show cause notice was issued to the petitioner with regard to the disciplinary enquiry. The conviction imposed upon the petitioner by the Trial Court has been set aside by the Appellate Court. The evidence before the departmental proceedings and the criminal case is one and the same. The order of dismissal deserves to be set aside.

3. Mr. Marlapalle, learned Advocate for respondent nos. 2 and 3 submits that in the enquiry the petitioner is held guilty for the charge of accepting illegal gratification. Such person cannot be allowed to remain in service. The learned Advocate submits that as per Rule 9 (4) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (*hereinafter referred to 'Rules-1979'*), it is not necessary to serve the

copy of the enquiry report while taking decision to impose major penalty. The learned Advocate submits that the petitioner has not shown the prejudice caused to him upon non service of the enquiry report. The prejudice caused upon non service of enquiry report is *sine qua non* to set aside the enquiry. It will depend upon facts of each case to determine whether non service of enquiry report would vitiate the punishment imposed upon the delinquent. The learned Advocate relies on the judgment of the Apex Court in a case of **Uttarakhand Transport Corporation Vs. Sukhveer Singh** reported in **2018 (1) SCC 231**, so also, judgment of the Apex Court in a case of **Haryana Financial Corporation and another Vs. Kailash Chandra Ahuja** reported in **2008 (9) SCC 31**.

4. The learned Advocate further submits that for the first time the petitioner amended the petition in August – 2017 and as an afterthought raised the ground of prejudice being caused to him.

5. The learned Advocate submits that even the rules of the Board do not require the enquiry report and the second show cause notice to be served upon the petitioner.

6. The learned Advocate in alternate submits that if this Court is setting aside the punishment imposed on the ground that copy of enquiry report and second show cause notice was not served pursuant to the departmental enquiry, then the Board be allowed to serve the second show cause notice. The learned Advocate further submits that the acquittal by the Appellate Court is based on benefit of doubt and is not a clear acquittal.

7. We have considered the submissions canvassed by the learned Advocates for respective parties.

8. It appears that the departmental enquiry was concluded against the petitioner by submission of an enquiry report on 26.07.1999. The petitioner was also convicted in the criminal case in the year-2003. The petitioner was issued with the show

cause notice as to why he should not be terminated from service on 11.08.2004. The said show cause notice was based upon the conviction of the petitioner in the criminal case. The show cause notice even remotely did not suggest about the conclusion of the enquiry and the receipt of the enquiry report by the disciplinary authority or that disciplinary authority has applied his mind to the enquiry report as required under Rule 9 (2) of the Rules-1979.

9. The petitioner replied pursuant to the show cause notice received to him. The reply was limited to the conviction sustained by him in the criminal case.

10. Though the show cause notice was issued on 11.08.2004, and the petitioner replied to the said show cause notice on 03.09.2004, the disciplinary authority imposed punishment upon the petitioner only on 29.01.2013. The order of dismissal from service is based on the conviction in the criminal

case, so also, on the premise that the charge in the departmental enquiry has been proved against him. The said show cause notice also nowhere demonstrates the application of the mind by the disciplinary authority about the charges. In show cause notice reference is made that an enquiry officer has given the report saying that the charges are proved against him. No plausible explanation is coming forth as to why pursuant to the show cause notice dated 11.08.2004 no punishment was imposed immediately and for the first time the punishment was imposed on 29.01.2013 only.

11. Be that as it may, second show cause notice is not issued to the petitioner pursuant to the departmental enquiry.

12. It is also fact that copy of the enquiry report was not served upon the petitioner and the petitioner is given the copy of the enquiry report upon his application under the Right to

Information Act, 2005 in the year-2016. The grounds are raised in the petition that the petitioner is not served with the copy of enquiry report and that the order imposing major penalty is passed against him without giving him opportunity to show cause with regard to the enquiry report and the departmental proceedings against him.

13. In absence of the second show cause notice pursuant to the departmental enquiry and the disciplinary authority not arriving at the satisfaction as required under Rule 9 (2) of the Rule-1979, the order of dismissal cannot be sustained merely on the basis of the conviction sustained by the petitioner in the criminal case as the said conviction has been set aside by the Appellate Court.

14. It is for the disciplinary authority to consider the nature of acquittal granted by the appellate Court, so also, the evidence in the

departmental enquiry, and after applying his mind and giving a second show cause notice to the petitioner to arrive at a conclusion with regard to the punishment imposed upon the petitioner.

15. In the light of above, the impugned order imposing punishment upon the petitioner dismissing him from service is set aside.

16. As it is submitted that the petitioner has attained the age of superannuation, it is not necessary to pass any further order with regard to the reinstatement. The petitioner be deemed to be under suspension till the age he attained the age of superannuation. The period of suspension and all other further consequential benefits shall depend upon the decision that shall be taken by the disciplinary authority after issuance of the second show cause notice to the petitioner. After receipt of the second show cause, the petitioner would be entitled to file his say. The disciplinary authority shall issue the second show cause notice

expeditiously and preferably within a period of four (4) weeks from today. The petitioner shall give reply to the same within a period of three (3) weeks from the date of receipt of the show cause notice. The disciplinary authority shall take decision within a period of six (6) weeks from the date of receipt of the reply from the petitioner.

17. The writ petition accordingly stands disposed of. No costs.

[R. G. AVACHAT, J.] [S. V. GANGAPURWALA, J.]

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