

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4951 OF 2002

Abdul Sayeed Abdul Razak Shaikh
Age : 46 yrs., Occu & Nil,
R/o. 11/324, Hazarkoli, Dhule 424001 .. **PETITIONER**

VERSUS

1. The State of Maharashtra
2. The Maharashtra State Electricity Board
Prakash Gad, Bandra (east) Mumbai
through its Chairman
3. The Executive Engineer Urban cum
Ruler Division, Dhule – 525 001
Vidyut Bhavan, Sakri Road, Dhule .. **RESPONDENTS**

Shri. A.R. Sayyed, Advocate holding for Shri. S.P.Brahme,
Advocate for Petitioner;

Miss S.S. Raut, Asstt.Govt.Pleader for Respondent No.1;

Shri. A.M. Gaikwad, Advocate for Respondent No.2 & 3.

CORAM : SUNIL P.DESHMUKH &
P.R.BORA, JJ.

DATE : 12th February, 2018.

ORAL JUDGMENT (PER: SUNIL P.DESHMUKH,J.)

- 1) Petitioner, who had been an employee of
Respondents No.2 and 3 and working as Sub-Engineer, had

been charged of misconduct causing loss of Maharashtra State Electricity Board material, embezzlement, disloyalty, breach of rules etc.

2) A disciplinary action was mooted against petitioner and he had been placed under suspension. It is the contention of the petitioner that the charges levelled against him are untenable having regard to the practices followed in working and there were antecedents, in way in which the business came to be transacted.

3) Counsel for petitioner submits that petitioner did not receive due opportunity nor was he allowed to engage expertise of advocate nor proper documents were supplied. It is further being submitted that he was not allowed even examination of proper witnesses. The thrust of his submission is, in violation and breach of principles of natural justice, enquiry has been conducted. The sum and substance is that enquiry stands vitiated on several counts.

4) Learned Counsel further submits that enquiry had been conducted under the aegis of Executive Engineer, who had sighted material and had also been acting as disciplinary

authority. On that count also, according to him, enquiry proceedings have been rendered untenable. He purports to refer to the rules and circulars issued by Respondents No.2 and 3 from time to time.

5) In addition to aforesaid, he submits that appellate authorities have been, in fact, not working as appellate authorities and have simply made short work of the appellate proceedings.

6) Moreover, he submits that if court is of the opinion, the matter be sent back to the appellate authority, in such a case, Supreme Court's decision in the case of *Allahabad Bank and others Vs. Krishna Narayan Tewari* 2017 AIR (SCW) 330 and observations in paragraph No.8 therein, would be relevant to be considered in the present matter.

7) He urges and entreats us to decide the matter in writ petition and avoid remitting the matter to appellate authority.

8) Learned Counsel purports to advert to that in criminal prosecution, in respect of the incident, has terminated

into acquittal of the petitioner.

9) He continues to contend that the decision taken by disciplinary authority is of a person under the aegis of whom the disciplinary enquiry had been initiated which comes close to that the complainant becomes judge himself and thus on that count as well, the decision taken by disciplinary authority is in breach of principles of natural justice.

10) Continuing aforesaid submissions, he places reliance on decision of the Supreme Court in the case of *Arjun Chaubey Vs. Union of India* reported in 1984 DGLS (SC) 86 = 1984 AIR(SC) 1356. Learned Counsel further refers to the decision of the apex court in the case of *Ranjit Thakur Vs. Union of India* – reported at 1987 DGLS (SC) 755 = 1987 AIR (SC) 2386 – in order to press into service his contention that the enquiry and decision is also vitiated because of the bias being entertained against the petitioner.

11) Countering aforesaid submission, Mr. Gaikwad, learned Counsel appearing for Respondents No.2 and 3, submits that electric poles belonging to Respondents No. 2 and 3 were taken out of their possession in breach of the rules

governing procedure for delivery. The petitioner was custodian of the poles and was responsible for their delivery. The poles were found outside workshop and those were sighted elsewhere. The loss of poles from custody and their appearance elsewhere constituted misconduct, and as such, disciplinary enquiry had been undertaken and proceeded with against him. The petitioner had been charge sheeted and had been given ample opportunity to meet with the charges levelled against him. The enquiry officer has found him guilty. The action culminated into decision of disciplinary authority which had been in accordance with the rules and procedure therefor. It is not a case where it can be said that the enquiry was not in adherence to the rules of enquiry. All due care to follow the rules had been taken and on the basis of the material which had come forth during the course of the enquiry, the enquiry officer had submitted his report and the disciplinary authority, in accordance with the rules, had taken the decision. He further refers to that two further authorities, first as well as second appellate authority, have concurred with the decision taken by the disciplinary authority. Since three decisions concurring are appearing against the petitioner, the writ petition does not carry any substance and deserves to be dismissed.

12) Perusal of the decisions by first as well as second appellate authority, evinces that those fall short of reflecting application of mind to the case sought to be advanced on behalf of petitioner and the grounds been taken. The decision of first appellate authority purports to refer to certain list of documents and from said reference, he purports to draw inference that proper opportunity had been given to the petitioner and the charges levelled against him being proved. Beyond that, there is nothing appearing in the decision of first appellate authority as to what were charges levelled against petitioner, how he had refuted the same, what was the case pleaded by the petitioner and what were the grounds, which have been raised by him. Further, it does not refer to as to how and why the decision by the disciplinary authority is proper.

13) The second appellate authority as well very similarly reiterates the reasons, as were recorded by the first appellate authority, further observing that no new ground has been taken at the stage of second appeal.

14) Not a single charge has been referred to in the decisions nor the material made available to the enquiry officer has been referred to.

15) Beyond the terse observation, that the opportunity had been given and the charges have been proved, the observations do not show at all as to what were allegations levelled; what was material that has been examined and as to how the decision rendered by the disciplinary authority is supported by the reasons.

16) As such, both the decisions at appellate stage, fall short of reflecting upon application of mind to the facts of the case of the petitioner's defence.

17) The position emerges that the decisions, at both the appellate stages, do not appear to be decisions by appellate authority as expected.

18) Although, Mr.Sayyad learned Counsel for petitioner has very persuasively referred to paragraph 8 of the decision in the case of *Allahabad Bank and others Vs. Krishna Narayan Tewari (supra)*, the observations appearing therein are in peculiar facts of that case. In the present matter, having regard to canvass opened up upon hearing all the parties, there appear to be disputes on lot of aspects involved in the matter, factual, legal as well as procedural and there are allegations of error having

been committed in prosecution of the enquiry. In the circumstances, parties deserve to be given proper opportunity to dwell on said aspects. Such an exercise in present writ petition is not desirable to be undertaken. In view of the same, we are not acceding to the request of learned Counsel Mr. Sayyad for deciding the writ petition on merits by the High Court.

19) Thus, we are inclined to remit the matter to first appellate authority to render proper decision, acting as appellate authority.

20) In view of the aforesaid observations, decision dated 08-01-1996 and 17-03-2001 rendered by the appellate authorities respectively, dismissing the first and second appeals of the petitioner, are set aside. The appeal of the petitioner stands revived before the first appellate authority for its prosecution, in accordance with the facts, circumstance, procedure and rules and law. It is also expected that proper opportunity would be given to the parties.

21) We also expect that the appeal would be decided as expeditiously as possible and preferably within a period of three

months from the date of receipt of writ of this order.

22) Needless to say that all the points are kept open for the parties.

23) Rule made absolute in aforesaid terms. Writ petition stands disposed of.

(P.R.BORA)
JUDGE

(SUNIL P.DESHMUKH)
JUDGE

bdv/