

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

BENCH AT AURANGABAD

WRIT PETITION NO.717 OF 2009

Bismillah Ibrahim Shah,
Age 31 years, Occupation Pensioner,
Residence of Near 32, Kholi Khadka
Road, Bhusawal, Tq. Bhusawal,
Dist. Jalgaon.

PETITIONER.

VERSUS

1) The State of Maharashtra,
Through Principal Secretary,
Home Department,
Mantralaya Fort, Mumbai.

2) The Additional Director General,
Of Police (Administration),
Maharashtra State, Mumbai.

3) The District Superintendent of Police,
Jalgaon, Taluka and District Jalgaon.

RESPONDENTS

.....
Shri V.B. Patil, Advocate for Petitioner.
Shri P.G. Borade, A.G.P. for Respondent Nos. 1 to 3.
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CORAM: **T.V. NALAWADE AND**
SUNIL K. KOTWAL, JJ.

DATED : **18th April, 2018**

JUDGMENT : (Per Sunil K. Kotwal J.)

1) By filing this Writ Petition the petitioner who is the retired

Police Inspector has claimed quashment of the order dated 21/01/2008 passed by the Maharashtra Administrative Tribunal. (Hereinafter referred to as "MAT") in Original Application No. 673/2007 wherein the punishment order dated 02/01/2004 passed by the respondent no. 2 Disciplinary Authority was confirmed. Respondent No. 1 is the State of Maharashtra, respondent No. 2 is the Additional Director General of Police (Administrative) Maharashtra State and the respondent No. 3 is the District Superintendent of Police, Jalgaon.

2) The learned counsel for the petitioner assailed the judgment and order of MAT as well as the punishment order passed by the Disciplinary Authority on the ground that the officer who held preliminary enquiry that is Additional Superintendent of Police, Jalgaon Shri Atul Kulkarni was not examined during the departmental enquiry held against the petitioner and therefore, an opportunity of cross-examination of this officer who held preliminary inquiry was not awarded to the petitioner.

3) His next objection is that the Disciplinary Authority has considered the statements recorded in preliminary enquiry report while imposing the punishment against the petitioner. He pointed out that the report of the Preliminary Enquiry cannot be considered while passing the order of punishment to Government employee. In

support of this contention, he placed reliance on **Nirmala J. Jhala Vs State of Gujarat & Anr. reported in 2013 (2) All M.R. 960**, wherein, Apex Court ruled that, *statement of complainant and witnesses recorded in preliminary enquiry cannot be taken into consideration while taking disciplinary action of punishment.* Preliminary Enquiry and its report loses significance importance, once regular enquiry initiated by issuing charge-sheet to the delinquent.

4) Next limb of the argument of the learned counsel for the petitioner is that copy of the final enquiry report was not provided to him, at the time of obtaining his say to show cause notice, issued to the petitioner. According to learned counsel for the petitioner, non furnishing of report of enquiry to the delinquent would be violative of principle of natural justice. He placed reliance on **Union Of India and Others Vs. Mohd. Ramzan Khan reported in (1991) 1 Supreme Court Cases 588** and **Hiran Mayee Bhattacharyya Vs Secretary, S.M. School for Girls and Others reported in (2002) 10 Supreme Court Cases 293** wherein the Apex Court ruled that, *non supply of copy of enquiry report to the delinquent is violation of principle of natural justice. Delinquent is entitled for copy of Enquiry Report submitted by Enquiry Officer to the Disciplinary Authority and to make representation against it.*

5) The learned A.G.P. for respondent submitted that, the preliminary enquiry report loses its importance as soon as the charge-sheet is served upon the delinquent, therefore, the cross-examination of Officer who held Preliminary Enquiry is not at all necessary to answer charges leveled against the delinquent.

6) The next limb of argument of the learned A.G.P. is that the copy of the Enquiry Report was duly served upon the petitioner by the Disciplinary Authority along with show cause notice and after obtaining explanation from the delinquent, final order of punishment was passed. Therefore, there was no violation of principle of natural justice.

7) The next submission of the learned A.G.P. is that at the time of passing final order the Disciplinary Authority did not take into consideration the statements of witnesses recorded during Preliminary Enquiry and therefore, the objection raised by the learned counsel for the petitioner is not at all tenable.

8) In the case at hand while examination of validity of the order passed by MAT, this court would not interfere with the findings of facts arrived at departmental enquiry proceeding except in the case of malafides or perversity. This court cannot re-appreciate evidence like appellate authority. If there is some evidence to

support the conclusion arrived at by the Disciplinary Authority, the same has to be sustained. We must refer the law laid down by Apex Court in **Bank of India & another Vs Degala Suryanaravana (AIR 1999 SC 2407)** wherein Apex Court ruled that

“The Court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings except in a case of malafides or perversity i.e. whether there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that finding. The court cannot embark upon re-appreciating the evidence of weighing the same like an appellate authority. So long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained”.

9) The first objection raised by the petitioner is regarding non examination of the Additional Superintendent of Police Shri Atulchandra Kulkarni who held Preliminary Enquiry in the matter. In the case at hand complainant Nitin Mohite submitted written complaint to the Superintendent of Police, Jalgaon on 31/08/1995 regarding extortion of Rs. 50,000/- by the concern Police Officer including the petitioner who was the then Police Inspector at Zilla

Peth Police Station, Jalgaon. After receipt of that complaint as per direction of Superintendent of Police, Jalgaon Shri Atulchandra Kulkarni the then Additional Superintendent of Police, Jalgaon held preliminary enquiry in the matter and submitted enquiry report on 11/09/1995. After considering that report charge-sheet was served upon the petitioner on 22/06/1999 and thereafter, departmental enquiry No. 56/1997 was initiated and the Regional Special Officer (Departmental Enquiry), Nashik was appointed as Enquiry Officer who held Regular Departmental Enquiry after recording the statements of the witnesses and submitted enquiry report to the Disciplinary Authority on 22/10/2001. After considering that enquiry report the Disciplinary Authority issued show cause notice to the petitioner on 13/08/2003. The reply was submitted by the petitioner to the show cause notice on 03/10/2003 and thereafter final order of punishment was passed by the Competent Authority on 02/01/2004.

10) Thus, in view of above events it is absolutely clear that Additional Superintendent of Police Shri Atulchandra Kulkarni has only played part of holding preliminary enquiry in the matter and on the basis of that preliminary enquiry report, the Disciplinary Authority decided to initiate Regular Departmental Enquiry against the petitioner. In view of law laid down Apex Court in **Nirmala J. Jhala Vs State of Gujarat & Anr.** (Cited Supra) the preliminary enquiry

and its report loses the significance/importance once the Regular Enquiry initiated by issuing charge-sheet to the delinquent.

11) After going through the enquiry report submitted by Regional Special Officer (Departmental Enquiry), Nashik, it emerges that while coming to the conclusion regarding the guilt of the petitioner, the preliminary enquiry report or statements of witnesses recorded during the preliminary enquiry were not taken into consideration. Therefore, the cross-examination of the Additional Superintendent of Police Atulchandra Kulkarni was absolutely redundant for the petitioner while answering charges levelled against him. So also roznama of the Departmental Enquiry indicates that the petitioner nowhere requested Enquiry Officer to issue notice to Atul Kulkarni, Additional Superintendent of Police, Jalgaon to secure his presence for cross-examination. Therefore, otherwise also at this stage petitioner cannot take objection regarding non examination of Atul Kulkarni, Additional Superintendent of Police, Jalgaon who held only preliminary enquiry in the matter. In the circumstances, we hold that objection raised by learned counsel for the petitioner regarding non examination of Atul Kulkarni the Additional Superintendent of Police, Jalgaon is not acceptable and hence rejected.

12) The important objection raised by the petitioner is regarding non supply of copy of Departmental Enquiry Report to the

petitioner at the time of issuing show cause notice to the petitioner. However, after careful examination of show cause notice itself it becomes clear that the Departmental Enquiry Report was annexed with show cause notice and specific note was taken at the bottom of show cause notice, "सोबत समारोप अहवालाची प्रत जोडली आहे" (Copy of Enquiry Report is annexed herewith). So also, it is to be noted that while submitting reply to the show cause notice on 03/10/2003 the petitioner in his entire reply nowhere raised objection that the copy of Departmental Enquiry report was not provided to the delinquent. Had the copy of Enquiry Report not supplied to the petitioner definitely he would have raised an objection to that effect in his reply to the show cause notice. Even in the appeal to the Government (Exh. 61), the delinquent/petitioner did not take objection regarding non supply of copy of Departmental Enquiry Report to him at the time of service of show cause notice. Thus, objection raised by the petitioner regarding non supply of copy of Enquiry Report to him is nothing but after thought objection and it holds no substance. Otherwise also, learned Presiding Officer of MAT held that, copy of Enquiry Report was duly supplied to the petitioner. Such findings of fact cannot be disturbed only on the basis of after thought objection raised by the petitioner. Therefore, we hold that, an objection raised by the petitioner regarding non supply of copy of Enquiry Report to the petitioner is not acceptable and accordingly it is rejected. In view of these distinct facts, the above cited authorities relied on by the

petitioner are distinguishable.

13) The last objection raised by the petitioner is regarding consideration of statement of witnesses recorded during Preliminary Enquiry Report. However, after going through the record and proceeding, it emerges that in the Departmental Enquiry statement of complainant Nitin Mohite and another witnesses were recorded by the Enquiry Officer and an opportunity of cross-examination was awarded to the petitioner. While submitting Enquiry Report dated 22/10/2001 the Enquiry Officer has duly considered statements of witnesses recorded during Departmental Enquiry and not during the Preliminary Enquiry. Statement of witnesses, specially a statement of Nitin Mohite clearly indicates that, there is evidence against the Petitioner to show that he was involved while extracting amount of Rs. 50,000/- from the complainant at Police Station. Therefore, by no stretch of imagination, it can be held that while submitting final Enquiry Report the Enquiry Officer considered statement recorded during the Preliminary Enquiry. We hold that the objection raised by the petitioner, regarding consideration of statement recorded during the Preliminary Enquiry, deserves to be rejected.

14) One important objection raised by learned counsel for the petitioner is that while holding that charges are entirely proved against the petitioner the Disciplinary Authority did not assign

separate reasons. However, we do not find substance in these objections because, in show cause notice itself, Disciplinary Authority has assigned reason for holding that charge is entirely proved against the petitioner as the extracted amount of Rs.50,000/- was refunded by the petitioner in presence of Additional Superintendent of Police, Jalgaon. During the final order of punishment dated 02/01/2004 the Competent Authority has considered each and every objection raised by the petitioner in his reply to the show cause notice and assigned reasons for his conclusion. Therefore, we do not find any perversity in the order of punishment passed by the Competent Disciplinary Authority.

15) One important submission of learned counsel for the petitioner is that the the punishment imposed by the Disciplinary Authority is shockingly dis-proportionate. However, by imposing punishment to the petitioner he was only placed at the lower scale of Police Inspector. Considering the seriousness of the charges that is extraction of money from innocent citizens, the punishment imposed by Disciplinary Authority is most lenient. By no stretch of imagination, it can be held that the punishment is shockingly dis-proportionate. Therefore, in view of law laid down by the Apex Court in **Chief Executive Officer, Krishna District Co-Operative Central Bnk Ltd., and another Vs K. Hanumantha Rao and another reported in 2017 (4) Mh. L.J. 484** this court cannot interfere with the

penalty awarded by the Disciplinary Authority which is not shockingly dis-proportionate.

16) In view of above discussion, we have no hesitation to hold that petition being devoid of merits deserves to be dismissed.

Hence following order :

ORDER

- 1) Writ Petition No. 717/2009 is dismissed.
- 2) Rule is discharged.

(SUNIL K. KOTWAL)
JUDGE

(T.V. NALAWADE)
JUDGE

mahajansb/