IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11572 OF 2015

Ramesh Ramchandra Kulkarni
Age: 61 years, Occu.: Retired Accountant M.S.R.T.C.,
R/o Shriramnagar, Behind Beed District Collector's
Office, Nagar Road, Beed. ..PETITIONER

VERSUS

1. The Chairman,
   M.S.R.T.C. Central Office,
   Maharashtra Vahtuk Bhawan,
   Dr. Anada rao Nayar Marg,
   Mumbai.

2. The General Manager,
   (Personnel and Industrial Relations)
   M.S.R.T.C., Maharashtra Vahtuk Bhawan,
   Dr. AnadaRao Nayar Marg,
   Mumbai.

3. The Regional Manager,
   Regional Office, M.S.R.T.C,
   CIDCO, Aurangabad.

4. The Divisional Controller,
   M.S.R.T.C. S.T., Beed. ..RESPONDENTS

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Mr. S.B. Deshmukh, Advocate for petitioner.
Mr. A.V. Deshmukh, A.G.P. for respondent – State.
Mr. D.S. Bagul, Advocate for respondent no.4.

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CORAM : S.V. GANGAPURWALA AND
R.G. AVACHAT, JJ.
DATED : 16th OCTOBER, 2018

ORAL JUDGMENT (Per : S.V. Gangapurwala, J.) :

Rule, made returnable forthwith. Heard finally with the consent of the parties.

2. The petitioner, at the relevant time, was working with the Maharashtra State Road Transport Corporation, initially as a Typist, subsequently promoted as Senior Clerk in 1982 and was promoted as an Accountant on Ad-hoc basis on 13th December, 2004. Three enquiries were initiated against the petitioner. In each and every enquiry the petitioner was found guilty. The petitioner has assailed the punishments imposed upon him.

3. Mr. Deshmukh, the learned Counsel for the petitioner submits that enquiry no. 9 of 2009 was initiated on the charge that the petitioner submitted a fake certificate of a Civil Surgeon being physically handicapped. According to the learned Counsel, the certificate of physical disability is a valid and genuine certificate. The punishment of reduction of pay by three stages has been imposed on the petitioner, whereby, a similarly situated employee, who had produced fake certificate, was imposed punishment of reduction of pay by only one stage. Second

enquiry no. 83 of 2009 was initiated against the petitioner on account of granting erroneous exemption of professional tax. In that enquiry, punishment of reduction of pay by one stage permanently was imposed on the petitioner. Third enquiry no. 21 of 2011 was initiated against the petitioner on account of the fact that the petitioner had illegally sanctioned leave encashment benefit to an employee. The punishment of reversion to the lower post was imposed on the petitioner. The said punishment was set aside by the First Appellate Authority by reducing his pay by one stage. However, in second appeal preferred by the petitioner, the punishment imposed by the disciplinary authority was restored and the petitioner was reverted.

4. The learned Counsel for the petitioner submits that the procedure in Departmental Enquiry was not properly followed. Proper opportunity was not given to the petitioner. The punishment imposed on the petitioner itself is disproportionate to the act alleged against the petitioner. The petitioner had already deposited the amount of Rs.11,622/- towards sanctioning of leave encashment. As such, the punishment imposed in enquiry no. 21 of 2011 of reverting the petitioner is improper and illegal.

5. Mr. Bagul, the learned Counsel for respondent no.4 submits that the impugned orders are rightly passed. The petitioner has been held to be guilty of all the charges leveled against him in various enquiries. The principles of natural justice have been followed. No illegality has been committed. The First Appellate Authority in enquiry no. 21 of 2011 had committed illegality in reducing the punishment of the petitioner. However, the Second Appellate Authority has rightly restored the punishment imposed by the disciplinary authority.

6. This Court, in the conduct of Departmental Enquiry and the punishment imposed therein, would not sit as Appellate Authority. The jurisdiction of this Court in the matters arising from Departmental Enquiry is in a narrow compass.

7. This Court would be only concerned with due adherence to the procedure and the observations of the principles of natural justice. Upon considering the submissions of the learned Counsel for the respective parties, it is evident that the principles of natural justice have been adhered to. Proper procedure has been followed. The enquiry has been conducted by following the rules and procedure. In view of that interference with the findings recorded by the Disciplinary Authority,

holding the petitioner guilty of the charges, needs no interference.

8. In enquiry no. 83 of 2009, wherein professional tax was exempted, the punishment was imposed on the petitioner of reduction of pay by one stage, whereas, in enquiry no. 9 of 2009 the petitioner was imposed punishment of reduction of pay by three stages, which was very serious. The petitioner had submitted fake certificate of the Civil Surgeon. The punishment for the same need not be interfered with. As far as enquiry no. 21 of 2011 is concerned, the punishment imposed was in respect of charge of sanctioning benefit of leave encashment of Rs.11,622/-. In the said case, the punishment of reversion to lower post was imposed upon the petitioner.

9. The petitioner filed appeal before the First Appellate Authority. The First Appellate Authority had set aside the punishment of reversion and only directed reduction of pay by one stage. The petitioner being aggrieved thereof, preferred second appeal. The Second Appellate Authority set aside the judgment of the First Appellate Authority and confirmed the judgment of the disciplinary authority. It is not open for the Second Appellate Authority to sit in an appeal filed by the petitioner and pass an order thereby setting aside the order of the First Appellate

Authority. In view of that, we set aside the order passed by the Second Appellate Authority reverting the petitioner and confirm the order of the First Appellate Authority of reduction of pay by one stage in enquiry no. 21 of 2011. The respondents shall calculate the retiral benefits of the petitioner accordingly.

10. Rule is made partly absolute in above terms. No costs.

(R.G. AVACHAT, J.) **(S.V. GANGAPURWALA, J.)**

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