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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1135 OF 2016

Nityanand Gajanand Patil,
Adult, Occu: Service, BW2/AW8,
Bachatdham, Opposite Sai Baba
Mandir, Wagle Estate, Thane
(West), Thane-401 604.

..Petitioner.

V/s.

1. The State of Maharashtra
through Secretary to Industries,
Energy & Labour Department,
Mantralaya, Mumbai.
2. Maharashtra State Khadi and Village
Industries Board, through its
Chairman 19/12, Manohardas
Street, Fort, Mumbai – 400 001.
3. Ramesh Devkar,
The Chief Executive Officer,
Maharashtra State Khadi and
Village Industries Board, 19/12,
Manohardas Street, Fort,
Mumbai – 400 001.

..Respondents.

Mr.Karan Asrani with Mr.Abhiraj Das and Mr.Vikram Chavan for
the petitioner.

Mr.M.M.Pabale, AGP for the respondent-State.

Mr.Rohit P.Sakhdeo for respondent Nos.2 & 3.

CORAM: SHANTANU KEMKAR AND NITIN W.SAMBRE, JJ.

RESERVED ON : JUNE 20, 2018

PRONOUNDED ON : JULY 4, 2018

JUDGMENT (PER NITIN W.SAMBRE, J.)

The petitioner is questioning the order dated October 5, 2015, December 18, 2015 and January 7, 2016 passed by respondent No.3 whereby the report of the Enquiry Officer exonerating the petitioner from the charges levelled against him came to be rejected with further order of *de-novo* inquiry against the petitioner.

2. The facts necessary for deciding the present petition are as under :-

After having joined the services with the respondent-board in August, 1994, the petitioner was put into charge of Handmade Paper Institute, Pune in the capacity of Director in 2005. Thereafter, the petitioner was posted as a Project Director, District Office, Pune from 2007 to 2010 and since June, 2012 was posted as District Village Industry Officer at Thane District Office.

3. Having noticed that the petitioner has indulged into certain illegalities during his services as Director, Handmade Paper Institute, Pune, pursuant to the provisions of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 ('the Rules of 1979' for short), the petitioner was served with a charge-sheet. Amongst other charges levelled against the petitioner are:-

- a) Irregularities in drawing travel expenses;
- b) Not maintaining proper travel record while using the department vehicles;
- c) Claiming excess transportation expenses;
- d) Intentionally taking such decisions to cause financial losses to the board;
- e) drawing salary of private individuals;
- f) Drawing overtime to which petitioner was lawfully not entitled to.

4. Respondent No.2 Board vide resolution, has adopted the provisions of "the Rules of 1979". The respondents accordingly appointed an Enquiry Officer to conduct inquiry. The Enquiry Officer after completing his inquiry submitted his report thereby

exonerating the petitioner of all the charges vide report dated October 10, 2014.

5. The Disciplinary Authority vide the impugned order noticed that the Enquiry Officer has conducted the inquiry in contravention of Rules 6.17 to 6.21 of the Departmental Enquiry Rule Book, 1991, rejected the report of the Enquiry Officer and ordered fresh inquiry pursuant to clause 7.3 of the Departmental Enquiry Rule Book as is apparent from the impugned order dated October 10, 2015. As a consequence of the aforesaid order, a fresh Enquiry Officer was appointed against the petitioner vide order dated December 18, 2015 and January 7, 2016. The petitioner was served with a notice of hearing by the newly appointed Enquiry Officer. All these three orders dated October 5, 2015, December 18, 2015 and January 7, 2016 are impugned in the present petition.

6. The learned counsel for the petitioner would urge that once the Enquiry Officer has submitted inquiry report in favour of the petitioner, exonerating him of all the charges, option with the respondents is to accept the said report and absolve the petitioner

of all the charges. He would submit that in case if the respondent Nos.2 and 3 intend to reject the same, it should have preceded with a show cause notice to the petitioner for disagreement with the report of the Enquiry Officer. According to him, neither any separate notice nor opportunity of hearing was granted to the petitioner before issuance of the impugned orders. According to him, the order impugned is not sustainable in the eyes of law and is liable to be quashed and set aside with direction to the respondents to pass an order absolving the petitioner of all charges.

7. *Per contra*, the learned counsel, Mr.Rohit P. Sakhdeo, for respondent Nos.2 and 3 opposed the claim of the petitioner and would urge that what has been ordered by the respondents is *de-novo* inquiry. According to him, there is no necessity to issue notice while ordering *de-novo* inquiry as the petitioner will be given opportunity of hearing during the inquiry. The petitioner has failed to demonstrate any prejudice, in absence of any notice to him. He would then urge that there is no statutory right in favour of the petitioner which prompts or warrants issuance of notice or opportunity of hearing to the petitioner, in case if the respondents

are in disagreement with the report of the Enquiry Officer. He sought dismissal of the petition.

8. Considered the rival submissions.

9. In the present case, it is noted that an inquiry was conducted against the petitioner pursuant to the Rules of 1979 and it is not in dispute that the services of the petitioner are governed by the said provisions.

10. The Enquiry Officer vide report dated October 10, 2014 has informed the respondents that the charges levelled against the petitioner were not proved and as such, exonerated the petitioner of the charges levelled against him.

11. After the said report of exonerating the petitioner in the disciplinary proceedings was submitted to the respondents' employer, the Disciplinary Authority by the impugned order dated October 5, 2015 rejected the report of the Enquiry Officer dated October 10, 2014 and pursuant to Rule 7.3 ordered *de-novo* inquiry in the matter.

12. The learned counsel for the respondents is right in

submitting that the Rule does not contemplate the opportunity of hearing to be offered to the petitioner and issuance of personal notice before ordering *de-novo* inquiry.

13. However, the law on the said issue is already well settled by the Apex Court in the matters of *State Bank of India and others V/s. K.R.Narayanan Kutty*¹, *Yoginath D.Bagde V/s. State of Maharashtra and another*² and *Punjab National Limited and others V/s. Kunj Behari Mishra*³ wherein it is observed that in case if the Disciplinary Authority is not in agreement with the findings recorded by the Enquiry Officer, the Disciplinary Authority should issue show cause notice to the delinquent like the petitioner and after hearing him should pass an order. Even if such express provision cannot be noticed in the Service Rules, still the fact remains that compliance of the principles of natural justice needs to be read in the relevant Rules. Appropriate support can be drawn from the judgment of the Apex Court in the matter of *State Bank of India and others V/s. K.P. Narayanan Kutty* (cited supra) particularly in para 6 which reads thus :-

1 (2003) 2 Supreme Court Cases 449

2 A.I.R. 1999 Supreme Court 3734

3 (1998) 7 Supreme Court Cases 84

“ It was also contended on behalf of the appellants that the High Court committed an error in setting aside the order of dismissal when it was not shown that any prejudice was caused to the respondent by not giving an opportunity to him by the disciplinary authority. In this regard the learned counsel cited a decision of this Court in Union Bank of India V/s. Vishwa Mohan [1998] 4 SCC 310. As already noticed above, before the High Court both the parties concentrated only on one point, namely, the effect of not providing an opportunity by the disciplinary authority when the disciplinary authority disagreed with some findings of the enquiry officer. It was also not shown by the appellants before the High Court that no prejudice was caused to the respondent in the absence of providing any opportunity by the disciplinary authority. The aforementioned case of Vishwa Mohan is of no help to the appellants. The learned counsel invited our attention to para 9 of the said judgment. As is evident from the said paragraph this Court having regard to the facts of that case, taking note of the various acts of serious misconduct, found that no prejudice was caused to the delinquent officer. In para 19 of the judgment in Punjab National Bank case, extracted above, when it is clearly stated that the principles of natural justice have to be read into Regulation 7(2) (Rule 50(3)(ii) of State Bank of India (Supervising Staff)

Service Rules, is identical in terms applicable to the present case) and the delinquent officer will have to be given an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the Enquiry Officer, we find it difficult to accept the contention advanced on behalf of the appellants that unless it is shown that some prejudice was caused to the respondent, the order of dismissal could not be set aside by the High Court. ”

14. It also worth mentioning here that the said judgment is also followed by one of us [Hon'ble Justice Shri Shantanu Kemkar] in the matter of *Ram Prasad Mandal V/s. Regional Manager, Cental Bank of India and others*⁴ wherein para 10 is worth referring to which reads thus :-

“ So far as contention that the Disciplinary Authority has not communicated the petitioner the tentative reasons for disagreeing with the findings of the enquiry officer, it is now well settled that even when the Rules in regard to giving opportunity to the officer are silent and Disciplinary Authority does not give an opportunity of hearing to the delinquent officer and records finding different from those of the enquiring authority that the charges against the

4 2006 Law Suit (MP) 405

officer were established, an opportunity of hearing has to be read into the Rule by which procedure for dealing with the enquiring authority's report is provided because it would be contrary to the principles of natural justice if a delinquent officer who has already been held to be not guilty by the enquiring authority, is found guilty without being afforded an opportunity of hearing on the basis of some evidence and material on which the finding of not guilty has already been recorded. It is also well settled that the delinquent officer will have to be given an opportunity to persuade Disciplinary Authority to accept the favourable conclusion of the enquiry officer and it is not necessary for the delinquent to show that some prejudice was caused to him. See Punjab National Bank v. Kunjbihari Mishra, 1998 2 LLJ 809, Yoginath D. Bagde v. State of Maharashtra, 1999 AIR (SC) 3734 and State Bank of India and Ors. V. K.P. Narayan Kutti, 2003 2 LLJ 1.”

15. In the aforesaid background, what is required to be noticed is even if the petitioner gets an opportunity of hearing while *de-novo* inquiry will be conducted against him, however, he has every right to submit explanation to the Disciplinary Authority on the issue of why the Disciplinary Authority should agree / disagree with the findings recorded by the Enquiry Officer. If such

opportunity is offered to the petitioner, it is always open for him to pursue the Disciplinary Authority to reach to some different conclusion. The degree of prejudice is not an issue which is required to be commented upon at this stage of the proceedings, but what is required to be noticed is the principles of natural justice needs to be read down in the relevant Rule while dealing with the eventuality as is sought to be canvassed in the present petition.

16. That being so, the writ petition needs to be allowed in terms of prayer clauses (b), (c) and (d) which read as under :-

“(a) The impugned order dated 5-10-2015 (Exhibit 'C' hereto) passed by Respondent No.3 for scrapping the Enquiry Report may kindly be quashed and set aside;

(b) The impugned order dated 18-12-2015 (Exhibit 'D' hereto) passed by Respondent No.3 for making fresh appointments of different Enquiry Officer and Returning Officer, may kindly be quashed and set aside;

(c) The impugned communication dated 7-1-2016 (Exhibit 'E'

hereto) issued by Respondent No.3 directing *de-novo* departmental enquiry against the petitioner may kindly be quashed and set aside.

17. The matter is remitted back to the respondent authority viz. respondent Nos.2 and 3. If respondent Nos.2 and 3 are in disagreement with the report dated October 10, 2014 of the Enquiry Officer, shall issue show cause notice to the petitioner calling upon him to submit his explanation and if required, grant him hearing.

18. The respondent authority thereafter shall be free to pass an order as it deem fit, in the facts and circumstances of the case.

19. Needless to clarify that this Court has not gone into the merits of the matter.

20. The petition stands disposed of in the aforesaid terms.

(NITIN W.SAMBRE, J.)

(SHANTANU KEMKAR, J.)