

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3310 OF 2004

Mrs. Sheetal Sudhir Sawant	...Petitioner
Versus	
The State of Maharashtra and ors.	...Respondents

Mr. Ajit R. Pitale for the Petitioner.
Mr. N.C. Walimbe, AGP for the State/Respondent.

**CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.**

Date of Reserving the Judgment : 26th July 2018
Date of Pronouncing the Judgment : 03rd August 2018

JUDGMENT :

- 1] Heard learned counsel for the parties.

- 2] The challenge in this petition is to the judgment and order dated 8.6.2001 made by the Maharashtra Administrative Tribunal (MAT), Mumbai dismissing O.A. No. 972 of 1996 instituted by the petitioner questioning her dismissal from the service by order dated 31.8.1995.

- 3] Mr. Pitale, learned counsel for the petitioner, in compliance with directions issued by this court on 30.10.2014 has *inter alia* filed a Synopsis which contained submissions in support of the present petition.

4] The submissions read as follows:

“A] In view of the above facts it is submitted that though common inquiry was conducted alongwith superior officers, all the superior officers were exonerated in departmental inquiries and Petitioner only came to be victimized by fixing entire responsibility of the alleged charges upon Petitioner who was holding the post of Asst. Cashier. The entire Rules of Business and Circular dated 21.06.1984 do not provide any responsibility and duty in respect of handling of cash and disbursement and deposit of the same in Reserve Bank with Asstt. Cashier.

B] The entire departmental inquiry is vitiated by not following principles of natural justice as Petitioner was not given any opportunity to get inspection of original bills which were vital documents and subject matter of charges in departmental inquiry. The Petitioner was not given opportunity to furnish her defence statement and without affording said opportunity, the Inquiry Officer mischievously submitted his report to the disciplinary authority.

C] Though common inquiry was conducted and the Special Inquiry officer was appointed considering the designations of

higher officers, great prejudice was caused to the Petitioner as procedure contemplated under Rule, 12 of Disciplinary and Appeal Rules has not been followed and right to furnish appeal to appropriate appellate authority of Petitioner was frustrated.

D] Admittedly all the higher officers exonerated from criminal prosecution either by not according sanction or by withdrawal of sanction for prosecution against them, however, the sanction was accorded only in respect of Petitioner for prosecution. Though sanction was accorded for prosecution against Petitioner, Petitioner has never received any summons from any prosecution machinery or criminal court till date.

E] Under the circumstances this Hon'ble Court may be pleased to allow the Petition by quashing and setting aside the orders passed by disciplinary authority and confirmed by Appellate authority and MAT with directions to Respondents to re-instate Petitioner with all consequential benefits and continuity in service. The date of superannuation of the Petitioner is 31.10.2015.

5] Mr.Pitale, learned counsel for the petitioner, however, has pressed the following submissions in support of the petition:

(a) Mr. Pitale submits that in the present case, the disciplinary proceedings were held against the petitioner in common with her superiors, i.e., Shri Dixit, Dy. Secretary and others. He submits that for this purpose, the disciplinary authority designated was an officer not only superior to the petitioner, but also an officer, who was superior to the petitioner's superiors, who were being departmentally proceeded in common with the petitioner. Mr. Pitale states that the disciplinary authority so designated was in fact, the appellate authority, insofar as the petitioner is concerned. As a result, Mr. Pitale submits that the petitioner was deprived of effective opportunity of appeal. This Mr. Pitale submits that is an error which goes to the root of the jurisdiction of the disciplinary proceedings and for which, the penalty of dismissal imposed upon the petitioner is liable to be set aside;

(b) Mr.Pitale, further submits that the superior officers, who were departmentally proceeded along with the petitioner were exonerated in the departmental proceedings. He submits that on the same basis, even the petitioner ought to have been exonerated. He submits that non – exoneration of the

petitioner amounts to discrimination, not to mention victimization. Mr. Pitale submits that therefore, this is the case where the respondents have already infringed under Article 14 and 311 of the Constitution of India.

6] Mr. Walimbe, learned AGP, submits that common proceedings were held against the petitioner and her superior officers after obtaining necessary sanction as provided under the Rules. The petitioner, factually instituted an appeal against her dismissal order which was considered by the appellate authority, but the same was rejected. Therefore, there was no denial of opportunity of appeal. He points out that there is ample material on record to establish the involvement of the petitioner in the serious charges of misappropriation and defalcation. He submits that since, no material evidence was found against her superiors, they may have been exonerated. He points out that there is no case of discrimination or victimization and therefore, this petition may be dismissed.

7] The rival contentions now fall for our determination.

8] In terms of Rule 12 of Maharashtra Civil Services Rules, where two or more Government servants are concerned in any case,

the Governor or any other authority competent to impose the penalty of dismissal from service on all such Government servants may make an order directing that disciplinary action against all of them may be taken in a common proceedings. Where the authorities competent to impose the penalty of dismissal on such Government servants are different, an order for taking disciplinary action in a common proceedings may be made by the highest of such authorities with the consent of the others. In the present case, there is no dispute that sanction as contemplated by Rule 12 for holding common proceedings was taken. Such sanction was never challenged by the petitioners.

9] Since the proceedings were held in common, naturally, the disciplinary authority designated was one who was competent to impose penalty not only upon the petitioner, but also upon her superiors. Although, there is no clarity, it is possible that the disciplinary authority so designated may have been the appellate authority, insofar as the petitioner was concerned. However, taking into consideration the peculiar circumstance that common proceedings were ordered to be taken and such order was never challenged by the petitioner, it cannot be said that the petitioner has suffered any real prejudice in the matter.

10] Further, from the synopsis submitted by the petitioner herself, it is very clear that after the Principal Secretary (Service) GAD made the order dated 31.8.1995 dismissing the petitioner from the service, the petitioner, on 26.12.1995 instituted a departmental appeal bearing Appeal No. 1 of 1995 to question such dismissal order. This appeal was duly considered by the Joint Secretary to the Government of Maharashtra (GAD), who, by order dated 2.7.1996 dismissed the appeal and confirmed the penalty imposed upon the petitioner. This is an additional reason to hold that there was no prejudice whatsoever to the petitioner by virtue of the procedure adopted by the disciplinary authority in the present case.

11] The petitioner may have had a vested right to institute an appeal, however, the petitioner, never had any vested right in the forum to which such appeal could be made. The right of the petitioner to institute the appeal was never taken away by the procedure adopted by the disciplinary authority. In such circumstances, we see no merit in the first contention raised by Mr.Pitale.

12] The second contention raised by Mr. Pitale is equally untenable. Merely because common proceedings may have been held against the petitioner and her superiors into the charges of

misappropriation and manipulation of accounts to the tune of Rs.1,10,289/-, that by itself, does not mean that all the charged officials have to be either held as guilty or discharged. Such matters have to be decided on the basis of evidence on record before the enquiry officer or disciplinary authority. In the present case, the enquiry officer may have found no evidence to link the petitioner's superior officers with the charge, but may have found that the material on record establishes the charge as leveled against the petitioner alone. In such circumstances, the petitioner, cannot allege any discrimination or victimization.

13] In the facts of the present case, the enquiry officer, on the basis of evidence before him, has held the charges as proved against the petitioner, though, the enquiry officer may have exonerated the petitioner's superiors. The findings recorded by the enquiry officer as accepted by the disciplinary authority cannot be regarded as perverse or based upon no evidence on record.

14] The enquiry officer has held that it is the petitioner who was receiving the amounts for the Government and was expected to credit the same by challans under her signature in the Reserve Bank of India. However, it was found that though such amounts were actually received by the petitioner and indicated in the account

books as credited in the Reserve Bank of India, factually, no such credits were made with the Reserve Bank of India. The enquiry officer has also noted that there were alterations, overwriting in the challans, including, gaps between the words as well as the figures in the challans. The enquiry officer has noted that despite directions by the superiors to reconcile the account with R.B.I., the petitioner failed to reconcile the same. On this basis, the enquiry officer concluded that the petitioner had alone misappropriated the amounts. Taking into consideration the limited scope of judicial review in matters of finding recorded by the enquiry officer in departmental proceedings, it cannot be said that such findings in the present case, are vitiated by any perversity.

15] Although, no other submissions were pressed by Mr. Pitale, we may add that rest of the submissions as reflected in the synopsis also cannot be accepted. It is settled position that there is nothing like mere technical breach of principles of natural justice. Therefore, on the basis of vague allegations as regards non-supply of documents, or failure to afford opportunity of cross-examination, it is not possible to interfere with the findings recorded by the disciplinary authority. The MAT, in the impugned order, has dealt with such contentions and we see no good ground to take any different view.

16] For all the aforesaid reasons, we see no good ground to interfere with the impugned judgment and order. This petition is liable to be dismissed and is hereby dismissed. Rule is discharged. There shall be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

Sunita
Kishandas
Chandka

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Sunita Kishandas
Chandka

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