

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

WRIT PETITION NO. 6263 OF 2004

Shri. Raghunath A. Govilkar	...Petitioner
Versus	
The State of Maharashtra and anr.	...Respondents

Shri. S.B. Deshpande for the Petitioner.
Mr. N.C. Walimbe, AGP for the State – Respondents.

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

DATE OF RESERVING THE JUDGMENT	: 06 th August 2018.
DATE OF PRONOUNCING THE JUDGMENT	: 07 th August 2018.

JUDGEMENT:

1] Heard learned counsel for the parties.

2] The challenge in this petition is to the judgment and order dated 27.3.2003 made by the Maharashtra Administrative Tribunal (MAT), Mumbai dismissing O.A. No. 778 of 2001 instituted by the petitioner questioning the order dated 31.1.2001 by which penalty of permanently withholding an amount corresponding to 10% from the petitioner's salary and gratuity came to be made by the disciplinary authority.

3] Mr. Deshpande, the learned counsel for the petitioner, submits that since there was delay in the institution of disciplinary proceedings, the petitioner had instituted O.A. No. 404 of 2000 before the MAT. The same was disposed of with directions to conclude the enquiry by 31.3.2001 and if there was any occasion for imposing penalty, to impose the same before 31.5.2001. Mr. Deshpande points out that in breach of such a direction, penalty was imposed on 31.5.2001 and not before 31.5.2001. He submits that in such circumstances, the enquiry was to stand quashed and set aside in terms of the order dated 31.1.2001, by which, the MAT disposed of O.A. No. 404 of 2000.

4] Mr. Deshpande, without prejudice to the aforesaid contentions, submits that the enquiry proceedings are violated by non-observance of the principles of natural justice. He submits that the petitioner had specifically requested furnish of certain documents/files. However, these were never furnished. Mr. Deshpande makes specific reference to paragraph 22 and ground 22 of his petition. He submits that such non - furnish amounts to denial of reasonable opportunity as is contemplated by Article 311 of

the Constitution. Mr. Deshpande relied upon the decision of the Hon'ble Supreme Court in ***Pepsu Road Transport Corporation vs. Lachhman Dass Gupta and anr. - (2001) 9 SCC 523.***

5] On the aforesaid grounds, Mr. Deshpande contends that the penalty imposed upon the petitioner warrants interference. He submits that since these aspects have not been considered by the MAT in their proper perspective, the impugned judgment and order warrants interference.

6] Mr. Walimbe, learned AGP for the respondent – State, submits that penalty has been imposed within the time prescribed by the MAT. He submits that full opportunity was granted to the petitioner and this is not at all a case where the petitioner has not be furnished any documents upon which reliance was placed by the disciplinary authority. He submits that there is no error in the view taken by the MAT and therefore, this petition may be dismissed.

7] The rival contentions now fall for our determination.

8] The O.A. No. 404 of 2000 instituted by the petitioner was disposed of by the MAT vide judgment and order dated 31.1.2001. The operative portion at paragraph 4 reads as follows:

"4. We, therefore, direct the respondents to see that the enquiry is concluded by the enquiry officer and he submits his final report regarding the enquiry to the disciplinary authority on or before 31.3.2001. In case if the enquiry officer happened not to exonerate the present applicant and if the disciplinary authority intends to award any punishment to the present applicant then in that case the action of serving the report of enquiry officer and show cause notice as well as the final awarding of punishment if any to be awarded must be concluded in any case before 31 of May 2001. If the respondents fail to conclude the enquiry and award punishment, if any, before 31-5-2001 then the enquiry will stand quashed and set aside. Rule is made absolute in the above terms with no orders as to costs."

9] Admittedly, the enquiry in the present case was concluded on 31.3.2001 and even penalty was imposed on 31.5.2001. The petitioner's contention that the penalty should have been imposed "*before 31.5.2001*" and imposition of the penalty "*on 31.5.2001*" is quite misconceived. This is not the correct manner of reading or interpreting the MAT's order dated 31.1.2001. The clear intention of the MAT was to ensure that the disciplinary proceedings are concluded expeditiously. This intention stands fulfilled by imposition of penalty on 31.5.2001. The

orders of the courts or tribunals cannot be interpreted like statutes. In any case, the day “31.5.2001” was yet to conclude when on 31.5.2001 at about 5.30 p.m., the penalty was imposed and served. Thus construed, we see no merit in the first contention in support of the petition.

10] As regards the second contention, again, we find no substantial merit in the same. From the record, we find that neither the enquiry officer nor the disciplinary authority have taken into consideration any documents, which were not supplied to the petitioner. The petitioner, except for pleading that he had applied for documents in respect of Room No. 108 (159) for inspection or that he has demanded for furnish/inspection of certain original case papers/files and that they were not furnished to him, has not pleaded or established any prejudice as such.

11] In ***Managing Director, ECIL vs. B. Karunakar - AIR 1994 SC 1074***, the Hon'ble Supreme Court has held that the theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights.

They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an “*unnatural expansion of natural justice*” which in itself is antithetical to justice.

12] The ruling in ***Pepsu Road Transport Corporation (supra)***, relied upon by the petitioner is distinguishable, because in the said case *even the documents relied upon by the department in establishing the charge had not been given to the delinquent*. In the present case, the charges levelled against the petitioner related to irregularities and negligence in distribution of tenements in reconstructed buildings thereby cheating the Board; manipulation of office

records and disobeying lawful orders issued by seniors. All the documents on basis of which such charges were leveled and were ultimately held as proved were made available to the petitioner. The documents which the petitioner had sought for are not the documents which were relied upon by the enquiry officer or the disciplinary authority. The judgment relied upon by the petitioner is thus, inapplicable to the facts of the present case.

13] On the aspect of non-furnish of documents/files, Mr.Deshpande himself invited the court's attention to paragraph 12 of the affidavit-in-rejoinder filed by the petitioner, which reads as follows

"12. With reference to para 6.14, I say and submit that the Commissioner Konkan Division after initiating Departmental Enquiry against the applicant, he requested MHADA official under his letter dated 18/9/1989 to make the original case papers available along with MHADA's remarks on the reply dated 1/9/89 filed by the applicant. The MHADA under their letter dated 3/2/1990 have offered remarks with reference to reply dated 1/9/89 filed by applicant, but the MHADA had not supplied the original papers to this office and therefore, under this office letter dated 19/2/90 the MHADA was again requested to make the original papers available. The MHADA under their letter dated 7/12/1995 supplied the case papers but by another letter dated 15/2/96 requested the Commissioner to return the said papers as they were

required in the context of another important matter. Some documents were given back to MHADA on 2/4/96 with request to make them available to the Commissioner as they were required to be sent to the special officer of Departmental enquiry Mumbai. After perusing the matter time and again, the MHADA under their letter dated 7/3/2000 informed this office that the papers which were given back to MHADA on 2/4/96 were not traceable and expressed their inability to make the papers available. The MHADA further requested the Commissioner to order the Department enquiry on the basis of papers which were available. On receipt of the said reply, the Enquiry officer and the presenting officer are appointed by the Commissioner under his order dated 26/4/2000."

14] From the aforesaid, it is clear that inspection was offered and availed by the petitioner. Merely because some of the originals were taken back as they were required for some other departmental enquiry, is not some serious breach of the principles of natural justice. Further, there is nothing on record to indicate that the documents which were not traceable were relied upon by the enquiry officer or the disciplinary authority. In such facts and circumstances, it cannot be said that there has been any denial of reasonable opportunity or failure of the principles of natural justice and fair play.

15] Taking into consideration the charges held as proved, there is no case made out to interfere with the penalty imposed as well.

16] For all the aforesaid reasons, we dismiss this petition. Rule is discharged. There shall be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

Dinesh
Sadanand
Sherla

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by Dinesh
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