

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

WRIT PETITION NO. 13968 OF 2016

Satappa Rangrao Desai	...Petitioner
Versus	
The State of Maharashtra & Ors.	...Respondents

Mr. S. R. Borulkar i/b. Mr. Manoj Patil for Petitioner.
Mr. C. P. Yadav – AGP for State -Respondents.

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

DATE : 18 JULY 2018

ORAL JUDGMENT :

1] Heard the learned counsel for the parties.

2] Rule. With the consent of and at the request of the learned counsel for the parties, Rule is made returnable forthwith.

3] The challenge in this petition is to the judgment and order dated 22nd January 2016 made by the Maharashtra Administrative Tribunal (MAT) dismissing Original Application No.804 of 2011, by which, the petitioner, had

questioned the order dated 21st February 2008 dismissing him from service.

4] The petitioner was appointed as a peon at the Office of Taluka Inspector of Land Records at Kolhapur with effect from 22nd November 1982. By order dated 7th August 2001, the petitioner was suspended from service with effect from 10th August 2001 pending disciplinary proceedings initiated against him. In fact, on 7th August 2001, a charge sheet was issued on the petitioner alleging that the petitioner had accepted bribes from several parties for discharging his official duties. Since the petitioner, denied the charges, an enquiry officer was appointed, who submitted report dated 30th April 2004 stating that the charges against the petitioner are not proved.

5] By order dated 10th October 2005, however, the Deputy of Land Records (disciplinary authority), after indicating the pitfalls in the conduct of the enquiry, ordered a *de novo* enquiry. On 25th October 2005, the petitioner represented against the order dated 10th October 2005 in the matter of holding of *de novo* enquiry. Since, the order

dated 10th October 2005 was not withdrawn, the petitioner instituted Original Application No. 659 of 2006. The MAT however, dismissed this OA No. 659 of 2006, thereby upholding the decision to hold *de novo* enquiry.

6] In pursuance of the *de novo* enquiry, the enquiry officer submitted a report dated 4th September 2007 in which he held the charges as proved against the petitioner. After the petitioner was afforded reasonable opportunity, the disciplinary authority by order dated 21st February 2008, dismissed the petitioner from service. The appeal instituted by the petitioner was dismissed by the appellate authority by order dated 14th July 2008. The revision instituted by the petitioner to the State Government was also dismissed by order dated 15th November 2011.

7] There petitioner thereupon instituted Original Application No. 804 of 2011, which has since been dismissed by the MAT vide impugned judgment and order dated 22nd January 2016. Hence, the present petition.

8] Mr. Borulkar, the learned counsel for the petitioner

states that in this case there is breach of Rule 9(2) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (said Rules), as a result of which the penalty of dismissal imposed upon the petitioner stands vitiated. In any case, Mr. Borulkar submits that taking into consideration the petitioner's service between 22nd November 1982 and 21st February 2008, the disciplinary authority was not justified in imposing the penalty of dismissal from service. Mr. Borulkar submits that the penalty of dismissal is shockingly disproportionate and the same warrants interference. In case, the petitioner's contention as regards breach of Rule 9(2) of said Rules is unacceptable.

9] As regards breach of Rule 9(2) of the said Rules, Mr. Borulkar submits that after the disciplinary authority, after receipt of the first enquiry report dated 30th April 2004 in which it was held that the charges against the petitioner were not proved, may have had a right to disagree with the findings in the enquiry report. However, for that purpose, it was incumbent upon the disciplinary authority to indicate the tentative reasons for disagreement and thereafter, to

afford the petitioner reasonable opportunity to represent. Mr. Borulkar relies upon ***Yoginath D. Bagde vs. State of Maharashtra & Anr. (1999) 7 SCC 739***, to submit that non compliance with such a requirement vitiates any further action of the disciplinary authority. Mr. Borulkar submits that in the present case, no such memo of tentative disagreement along with reasons for such disagreement was ever furnished to the petitioner. Therefore, the entire action of the disciplinary authority post the receipt of the first enquiry report dated 30th April 2004 stands vitiated. On this basis, Mr. Borulkar submits that the penalty imposed upon the petitioner is liable to be set aside.

10] Mr. Yadav, the learned AGP for the State submits that this is not a case where the disciplinary authority has exercised its powers under Rule 9(2) of the said Rules. In any case, Mr. Yadav submits that the petitioner is once again challenging the holding of *de novo* enquiry in terms of order dated 10th October 2005 when in fact, such a challenge was squarely raised by the petitioner in OA No. 659 of 2006, which has since been dismissed by judgment and order dated 27th April 2007. Mr. Yadav submits that the

very raising of such an issue constitutes abuse of the judicial process. Mr. Yadav submits that the charges against the petitioner were very serious and therefore the penalty imposed is by no means disproportionate.

11] Rival contentions now fall for our determination.

12] In the first place, we cannot agree with the contention of Mr. Borulkar that the order dated 10th October 2005 made by the disciplinary authority remitting the matter for further enquiry into charge sheet issued to the petitioner is relatable to exercise of powers under Rule 9(2) of the said Rules. According to us, such exercise may have nexus with the powers under Rule 9(1) of the said Rules. Therefore, the contention based upon the alleged non compliance with the provisions of Rule 9(2) of the said Rules has interpreted in *Yoginath Bagde* (supra) really does not arise.

13] In any case, this was the precise contention raised by the petitioner in OA No. 659 of 2006 to challenge the order dated 10th October 2005, by which the *de novo* enquiry came to be ordered. OA No. 659 of 2006 was dismissed by

the MAT vide judgment and order dated 27th April 2007. The petitioner never challenged the judgment and order dated 27th April 2007 and therefore, the same has attained finality. The petitioner, instead, participated in the *de novo* enquiry and took his chance. Now that the charges have been held as proved against the petitioner in *de novo* enquiry, the petitioner is not justified in once again raising the very same ground to question the action of the disciplinary authority. The petitioner, in effect, seeks to once again challenge the order dated 10th October 2005, notwithstanding the fact that such challenge was squarely raised in OA No. 659 of 2006 and such challenge failed by virtue of judgment and order dated 27th April 2007 made by the MAT.

14] Taking into consideration the charges levelled against the petitioner, we cannot say that the penalty imposed is shockingly disproportionate. The charge relates to acceptance of illegal gratification.

15] Since, no other contentions were advanced before us, we find no good ground to interfere with the view taken by

the MAT in the impugned judgment and order dated 22nd January 2016. This petition is therefore liable to be dismissed and is hereby dismissed. Rule is discharged. There shall be no order as to costs.

Sunita
Kishandas
Chandka

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

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