

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

WRIT PETITION NO. 5960 OF 2016

Prakash Bapurao Pathak	...Petitioner
Versus	
The State of Maharashtra & Ors.	...Respondents

Ms Bhavana Punalekar i/b. Mr. Nitin Dalvi for Petitioner.
Mr. N. C. Walimbe – AGP for Respondents – State.

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

DATE : 04 APRIL 2018

ORAL JUDGMENT :

- 1] Heard 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 March 2010 made by the Maharashtra Administrative Tribunal (MAT) dismissing petitioner's Original Application no. 456 of 2009 questioning the petitioner's dismissal from service.
- 4] Ms Bhavana Punalekar i/b. Mr. Nitin Dalvi, the learned counsel for the petitioner submits that the MAT failed to

appreciate that the two enquiries which were held against the petitioner were grossly unfair and in violation of principles of natural justice. She submits that no reasonable opportunity was afforded to the petitioner and this is indicative of '*bias*' on the part of the enquiry officer, who, incidentally, held both the enquiries.

5] Ms Punalekar submits that admittedly, two advance increments of salary based upon A+ remarks in the petitioner's annual confidential reports for the years 1994-1999 were granted to the petitioner. After such gradings in annual confidential reports and release of two advance increments, the respondents were not at all justified to allege any misappropriation of funds by the petitioner and on such basis, hold enquiries against the petitioner and dismiss the petitioner. Ms Punalekar submits that since this aspect has not been considered by the MAT, the impugned judgment and order warrants interference.

6] Ms Punalekar, further submits that even otherwise there was no adequate material on record to hold that the charges of misappropriation leveled against the petitioner

were proved. She therefore submits that the findings recorded by the enquiry officer suffer from perversity and on this basis also the penalty of dismissal imposed upon the petitioner was liable to be set aside.

7] Mr. Walimbe, the learned AGP for the State, at the outset, points out that the impugned judgment and order was made by the MAT on 22nd March 2010 and the present petition has been instituted on 3rd June 2015. He points out that there is no explanation whatsoever for this inordinate delay of over five years in the institution of the present petition. He submits that on the ground of delay and laches, this petition, ought to be dismissed.

8] Without prejudice, Mr. Walimbe submits that very serious charges of misappropriation of government funds came to be leveled upon the petitioner. The incidents of misappropriation came to light after, the two advance increments in salary were released to the petitioner. Two separate enquiries were held against the petitioner, in which, every possible opportunity of defence was afforded to the petitioner. He points out that there is ample evidence

on record in support of the findings of guilt recorded by the enquiry officer. He points out that '*bias*' has been alleged against the enquiry officer because, the enquiry officer, refused to indulge the petitioner by granting adjournments after adjournments. He submits that it is the petitioner, who was bent upon delaying enquiry proceedings by seeking adjournments on frivolous grounds. He submits that denial of adjournments in such circumstances, is not indicative of any '*bias*' or unfair treatment. He submits that the scope of interference with findings recorded by the disciplinary authorities is quite limited. For all these reasons, he submits that this petition is liable to be dismissed.

9] The rival contentions now fall for our determination.

10] As urged by Mr. Walimbe, it is true that the impugned judgment and order made by the MAT on 22nd March 2010 and the present petition has been instituted only on 3rd June 2015. There is absolutely no explanation for such inordinate delay in the institution of the petition. This petition is therefore required to be dismissed on the ground of unexplained inordinate delay and laches. However, rather

than dismiss this petition only on this ground, we propose to address the other contentions urged by Ms Punalekar, the learned counsel for the petitioner, in support of this petition.

11] There is absolutely no merit in the allegation of *bias* against the enquiry officer. In the first place, the enquiry officer, was not even impleaded as a party in the proceedings before the MAT, even though, the allegation of *bias* was vaguely made. Secondly, the allegation of *bias* is on the basis that the enquiry officer did not accede to the request for adjournments in the course of the enquiry proceedings. There are no particulars set out in support of such allegation. Even otherwise, we find that the MAT, has dealt with these allegations and found that there was no denial of adjournments in any justified manner. Disciplinary proceedings have to be concluded expeditiously. If, without any strong reasons, the delinquent official seeks to delay said proceedings by seeking adjournments, then, the enquiry officer is not expected to indulge such delinquent official. In any case, such circumstance, by itself, is not indicative of *bias*. No other material has been produced on

record in support of the bald allegation of *bias*. This is therefore not a case of violation of principles of natural justice and fair play.

12] There is material on record which indicates that the facts relating to misappropriation came to light after advance increments were sanctioned and paid to the petitioner. In such circumstances, the petitioner, cannot contend that the lapses on his part stands condoned or waived because two advance increments on his salary were released prior the institution of the disciplinary proceedings. There is accordingly no merit in the contention based upon release of two advance increments on salary or for that matter on the basis of A+ remark in the confidential roles of the petitioner for the period 1994-1999.

13] The petitioner, has not at all demonstrated as to why the findings recorded by the enquiry officer are backed by no evidence on record so as to stigmatized on perversity. The MAT or for that matter, this Court, in the exercise of powers of judicial review is not expected to re-appreciate or reassess the evidence before the enquiry officer as if, they

were exercising any appellate jurisdiction. As long as the enquiry has been held consistent with the principles of natural justice and fair play and as long as there is some evidence / material on record to sustain the findings of the enquiry officer, there is no question of interference. The MAT in paragraph 3 of the impugned judgment and order has made reference to several decisions of the Hon'ble Supreme Court in the matter of scope of interference with findings of fact recorded by the disciplinary authorities.

14] In the present case, taking into consideration the nature of charges held as proved, there is no question of even alleging that the penalty imposed upon the petitioner is disproportionate.

15] For all the aforesaid reasons, we see no ground to interfere with the impugned judgment and order made by the MAT. 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)