

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

WRIT PETITION NO. 8394 OF 2015

The State of Maharashtra and ors. ...Petitioners
Versus
Deepak V. Sidam ...Respondent

Mr. O.M. Kulkarni, AAGP for the State/Petitioners.
Mr. C.K. Bhangoji a/w. Mr. V.A. Madane for the Respondent.

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

DATE : APRIL 9, 2018.

ORAL JUDGMENT:

1] Heard learned counsel for the parties.

2] The challenge in this petition is to the judgment and order dated 20th July 2015 made by the Maharashtra Administrative Tribunal (MAT), Mumbai in O.A. No. 332 of 2014 instituted by the respondent to question his termination of service by the order dated 18th May 2012 and dismissal of his appeal against the termination order, by order dated 20th February 2014.

3] Mr. Kulkarni, learned AAGP for the State/Petitioners, submits that serious charges were levelled against the

respondent. Such charges were duly proved in a departmental inquiry in the course of which, five witnesses were examined on behalf of the department and two defence witnesses on behalf of the respondent. The findings recorded by the enquiry officer were accepted by the disciplinary authority and the penalty of dismissal was imposed upon the respondent. The respondent's appeal was considered in detail by the appellate authority, but dismissed by order dated 20th February 2014. Mr. Kulkarni submits that the MAT, in the present case, has reassessed and reevaluated the evidence before enquiry officer/disciplinary authority, as if, it were exercising appellate jurisdiction in the matter. Mr. Kulkarni submits that taking into consideration the limited scope of judicial review in such matters, it was not open for the MAT to reassess and re-evaluate the evidence. He points out that the MAT, has not even held that there was any perversity involved in the record of findings of fact by the enquiry officer/disciplinary authority. He submits that the view taken by the MAT is clearly in excess of jurisdiction and therefore, the same warrants interference.

4] Mr. Kulkarni submits that in the present case, the appellate authority has taken into consideration all the contentions raised by and on behalf of the respondent and by a detailed order, dismissed the respondent's appeal by stating cogent reasons in support of such dismissal. Without prejudice, Mr. Kulkarni submits that if at all, there was any infirmity in the order of the appellate authority, the MAT, could have set aside such matter and remanded the matter to the appellate authority for reconsideration of the respondent's appeal. However, Mr. Kulkarni submits that it was not open to the MAT to itself act as an appellate authority and to reverse the findings of fact recorded by the enquiry officer/disciplinary authority, even without recording any conclusion that such findings were vitiated by perversity.

5] Mr. C.K. Bhangoji, learned counsel for the respondent, submits that this is a case of discrimination against the respondent. He points out that complaints were made against four officers, but enquiry was held only against the respondent. Further, he points out that envelope, in which, certain incriminating material was stated to be kept has

received in the respondent's office, was unauthorisedly opened by the co-employees, who, on the basis of the same, have lodged a complaint against the respondent. He points out that the envelope bears the receipt of endorsement of a later date, whereas the complaint was lodged much earlier. Mr. Bhangoji submits that all this is extremely suspicious and the MAT has quite correctly interfered with the findings recorded by the enquiry officer and the punishment imposed by the disciplinary authority.

6] Mr. Bhangoji submits that the parties on whose behalf, it was alleged that the respondent was undertaking the work of registration have themselves filed replies denying that they have entrusted or engaged the respondent to undertake any such work. Mr. Bhangoji submits that necessary details were furnished as regards the deposit of certain amounts in the respondent's bank account. Mr. Bhangoji submits that enquiry officer failed to take into consideration the evidence in support of the respondent, but concentrated quite unfairly, only upon certain evidence, which, he perceived as being against the respondent. He submits that all these grounds were raised

before the appellate authority, which, has failed to consider the same. Mr. Bhangoji submits that in such circumstances, the MAT was quite justified in interfering with the findings recorded by the enquiry officer and the punishment imposed by the disciplinary authority. For all these reasons, Mr. Bhangoji submits that this petition may be dismissed with costs, since, on the basis of illegal orders, the respondent is out of service since the year 2012.

7] The rival contentions now fall for our determination.

8] The respondent was posted as a Senior Clerk in the Registrar of Firms at Pune office. During such posting, the charge memorandum was served upon the respondent alleging his involvement in at least three charges. The first was that certain amounts were discovered as deposited in the respondent's bank account, of which, the respondent was unable to offer proper explanation. There were reasons to believe that these were certain amounts deposited in the accounts of respondent by certain parties, who had official works in the office of Registrar of Firms. The pay - in slips were appended to the charge memorandum. There

was also the charge that upon interception of some correspondence addressed to the respondent at the office, it was seen that the respondent was engaged in the work of Registrar of Firms at the behest of some private parties/ Chartered Accountant Firms. The charge, was that the respondent, though employed as a Government servant, was engaged in such activity, from which, the respondent, was earning certain amounts as well.

9] Based upon the charge memorandum, an enquiry was held against the respondent. In all, five witnesses were examined by the department and two witnesses were examined by the respondent by way of defence. The documentary evidence was also produced on record. The enquiry officer held that the charges leveled against the respondent were duly proved on the basis of evidence on record.

10] The disciplinary authority, after due compliance with principles of natural justice and fair play accepted the report of the enquiry officer and imposed penalty of termination upon the respondent by order dated 18th May

2012. The respondent appealed and the appellate authority, by quite a lengthy order, has dismissed the appeal on 20th February 2014.

11] Now, if the impugned judgment and order made by the MAT is perused, it does appear that the MAT has virtually re-appreciated and re-evaluated the evidence before the enquiry officer/disciplinary authority. The MAT has not held that the findings recorded by the enquiry officer are perverse because there is no evidence on record to sustain the same or that they are contrary to the weight of the evidence on record. The MAT has also not held that this is a case where some vital and important evidence has been overlooked or that the findings are based upon extraneous or irrelevant matters. The MAT, after observing at paragraph 13 that the appellate authority has not done its duty of re-appreciating or re-evaluating the evidence on record, as, itself, undertaken the task of re-appreciation and re-evaluation of evidence. All this is apparent from paragraphs 10,11, 12 and finally 14 of the impugned judgment and order.

13] The MAT, has not only re-appreciated and re-evaluated the evidence before the enquiry officer, but further has gone to the extent of attributing certain motives in the matter of conduct of enquiry against the respondent. All this, in our opinion, is quite in excess of jurisdiction vested in the MAT in matters relating to judicial review of findings recorded by the enquiry officer/disciplinary authority.

14] In ***Union of India & Ors. vs. P. Gunasekaran - AIR 2015 SC 545***, the Hon'ble Supreme Court, in the context of exercise of powers under Articles 226 and 227 by the High Court in relation to disciplinary proceedings has held that the High Court is not and cannot act as a second court of first appeal. The Hon'ble Court has spelt out the restrictive parameters of jurisdiction to be exercised by a High Court in relation to disciplinary proceedings. It is held that the High Court cannot go into reliability and adequacy of evidence. Similarly, the High Court cannot re-appreciate the evidence before the enquiry officer in order to reach to a different finding. Interference is permitted only where the findings of fact is perverse. The test laid down by the

Hon'ble Supreme Court, which will apply also to Central Administrative Tribunal exercising the powers of judicial review are as follows :

“(I) The High Court can only see whether:

- a). the enquiry is held by a competent authority;*
- b). the enquiry is held according to the procedure prescribed in that behalf;*
- c). there is violation of the principles of natural justice in conducting the proceedings;*
- d). the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- e). the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- f). the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- g). the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- h). the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
- i). the finding of fact is based on no evidence.*

(II) Under Article 226/227 of the Constitution of India, the High Court shall not:

- (i). re-appreciate the evidence;*

(ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii). go into the adequacy of the evidence;

(iv). go into the reliability of the evidence;

(v). interfere, if there be some legal evidence on which findings can be based.

(vi). correct the error of fact however grave it may appear to be;

(vii). go into the proportionality of punishment unless it shocks its conscience."

15] In this case, the MAT, in the context of the order dated 20th February 2014 made by the appellate authority, has made the following observations at paragraph 13:

"13. Now, if the above is the state of affairs as far as the enquiry report is concerned, we find that in the memo of appeal which was soul achingly lengthy, these points were raised. However, the appellate authority has apart from taking note of the rival cases, not examined the significant points. The appellate authority presides over a forum which was in the manner of speaking a final authority on facts, and therefore, it was necessary for him to examine the factual aspects closely when it was a question of the career of an employee. Reading of the appellate order shows, as if the appellate authority was under an impression that it had to work within the constraints that in fact we are required to do as per law. That quite clearly is not the accurate approach. The appellate authority has all the powers that the authority of first instance had and in fact more. It was open for him, and in this matter, at least he was in duty bound to re-appraise the evidence. We may not be concerned with the conclusions drawn by him, but

in our opinion, he has not given even an indication that he was conscious of the fact of his jurisdictional expanse. If this is the state of affairs, then here in this forum, we do not think we should feel constrained because after-all, there is no other consideration in the rule of law governed system than the requirement or doing justice. Therefore, we shall in short take stock of the evidence such as it is."

16] Even if, it is accepted that the appellate authority, in this case failed to discharge its duties, at the highest, the MAT could have set aside the order of the appellate authority and remanded the matter to the appellate authority for discharge of its duties as the appellate authority. The MAT was not justified in itself acting as an appellate authority and *"taking stock of the evidence such as it is"*.

17] Taking into consideration the alternate submission made by Mr. Kulkarni, we are of the opinion that the interests of justice will be met, if the order dated 20th February 2014 is set aside and the matter is remanded to the appellate authority for disposal of the respondent's appeal, in accordance with law and on its own merits, as expeditiously as possible and in any case within a period of 8 weeks from today.

18] Accordingly, we partly allow this writ petition by setting aside not only the impugned judgment and order dated 20th July 2015 made by the MAT, but we also set aside the order dated 20th February 2014 made by the appellate authority. Further, we remand the matter to the appellate authority and direct the appellate authority to decide the respondent's appeal, in accordance with law and on its own merits as expeditiously as possible and in any case within a period of 8 weeks from today.

19] The appellate authority to decide the appeal on its own merits and in accordance with law without being influenced either by the impugned judgment and order dated 20th July 2015 made by the MAT or its previous order dated 20th February 2014, which orders, in any case, we have now, set aside. In case, the respondent desires an opportunity of personal hearing, the appellate authority shall grant such personal hearing to the respondent.

20] Rule is made partly absolute to the aforesaid extent. There shall be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)