

DDR

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9740 OF 2013

Shri Aslam Nabisab Mulla

...Petitioner
(Org. Appellant)

Vs.

Union of India & ors.

...Respondents

.....

Mr. R.M. Momin, Advocate for the petitioner.

Mr. P. R. Vyas along with Mr. Pranil Sonawane, Advocate for the
respondent no.1/UOI.

.....

**CORAM : SMT. V.K. TAHILRAMANI ACTING C.J.
AND M.S.KARNIK, J.**

DATE : 18th JANUARY, 2018.

ORDER (PER M.S.KARNIK, J.) :-

Invoking the jurisdiction of this Court under Article 226 and 227 of the Constitution of India the petitioner challenges the order dated 5/3/2013 passed by the passed by the Central Administrative Tribunal, Mumbai Bench, Mumbai ('the Tribunal' for short) in O.A. No.833/2010.

2. The brief facts of the case in a nutshell are as

under :-

The petitioner joined the services of Central Bureau of Investigation (CBI) at Special Crime Branch, Navi Mumbai as a Police Constable with effect from 27/9/1995. The petitioner's services are governed by the provisions of Central Civil Services (Conduct) Rules, 1964. According to the petitioner, he had an unblemished service record. It is the petitioner's case that sometime in June, 2001 one of his colleagues asked for bribe/consideration from the petitioner for allowing him to drive the government vehicle. By letter dated 11/6/2001, the petitioner informed this fact to the higher authority. As the petitioner always served with honesty and integrity, he pursued with his representation. This was not liked by his colleagues, therefore, the petitioner's colleagues along with other employees started harassing and threatening the petitioner with dire consequences. The petitioner was badly assaulted in July 2001 by some unknown persons with iron bars and hockey sticks. Further complaint was lodged by the petitioner without being deterred by this incident. The petitioner brought to the notice of

his superiors the various malpractices of his colleagues. The petitioner was not even paid salary on some occasions.

3. It is the petitioner's case that on 28/1/2004, when he was in the night shift duty, he observed that some office colleagues were drinking liquor while on duty in the office premises and therefore, he objected to this and tried to convince them not to do such act while on duty. The said employees instead of heeding to the petitioner's request warned him of dire consequences. When petitioner did not listen to his colleagues and persisted with his request they started beating him mercilessly and tore his clothes. Thereafter, employee Shri Sibichan and Shri Jayantilal in a drunken state dragged the petitioner to the office of Mr. Panwar and stated that the petitioner was trying to steal official documents. A complaint was levelled against the petitioner on false charge of theft of documents and papers. The documents were not relevant to the department. No panchanama nor the seizure report was prepared and on 11/3/2004 the petitioner was served with the

charge-sheet for alleged theft of documents.

4. The petitioner denied the charges. The departmental inquiry was initiated against him with effect from 1/4/2004. The petitioner was not given opportunity of appointing the defence representative and thus the inquiry is conducted in violation of principles of natural justice. The inquiry was conducted in a hurried manner and the petitioner was issued with a termination notice dated 11/7/2005.

5. In the submission of the learned Counsel for the petitioner, he was never issued with the copies of the inquiry proceedings or the report of the Inquiry Officer. No show cause notice was ever issued to him before the termination order was served on him. Entire inquiry was conducted in violation of principles of natural justice as the necessary documents which petitioner wanted in support of his defence were not supplied to him. In fact on 14/12/2006, the petitioner sent a legal notice through his Lawyer to furnish the documents so as to enable him to file appeal.

6. Being aggrieved by the termination order dated 11/7/2005, the petitioner preferred an appeal to the appellate authority. The said appeal came to be dismissed on 11th May, 2009. The petitioner filed O.A. No.833 of 2010 before the Tribunal against the order dated 11/5/2009. The said O.A. came to be dismissed by the impugned order dated 5/3/2013. Learned Counsel for the petitioner contended that the inquiry is conducted in violation of the principles of natural justice. The petitioner was not given opportunity to defend his case. The request made by the petitioner to appoint defence assistant was turned down as the respondents were hostile to the petitioner. The petitioner had to defend his own case and as he had limited knowledge it was not possible for him to understand the intricacies of the inquiry proceeding.

7. In the submission of the learned Counsel for the petitioner, the Inquiry Officer did not even consider the contention of the petitioner that a false case was levelled against him only because he had objected to his colleagues drinking

liquor while on duty. In his submission neither the proceedings of the inquiry nor inquiry report was supplied to him. Learned Counsel for the petitioner would submit that the appellate order is not a reasoned order.

8. In the submission of the learned Counsel, the Tribunal failed to consider that Witness No. 4 who was examined in the absence of the petitioner had stated that the petitioner had admitted his guilt regarding removal of official documents. The Tribunal has however not considered the aspect about the witness having admitted that no seizure/recovery memo was prepared.

9. It is further contended by the learned Counsel for the petitioner that insofar as the department witness PW-5 is concerned, he had stated that he was present in the Duty Officer's room at the time of the incident. However, the Tribunal failed to consider as to what Witness No.5 was doing in the night when his duty was over by 6 o'clock in the evening.

10. Learned Counsel for the petitioner further submitted that the documents which were allegedly removed from the office were not related to the Crime Section or any case in the investigation. The documents in fact pertained to Establishment Section and were not of any importance. The punishment imposed is excessive. In the submission of the learned Counsel for the petitioner, the Inquiry Officer's report is completely based on the alleged admission given by the petitioner to the department's witness. It is further contended by the learned Counsel that he was always interested in attending the inquiry. He in fact attended the inquiry on 13/9/2004 and 11/10/2004. In the submission of the learned Counsel, no notice was given to him of the subsequent dates of hearing nor he was informed about further progress of the inquiry and therefore, also the impugned order deserves to be set aside on the ground that inquiry was conducted in breach of principles of natural justice and sufficient opportunity was not given to defend himself.

11. Learned Counsel for the respondents on the other

hand invited our attention to the Inquiry Officer's report, more particularly the chart reflected in the Inquiry Officer's report which clearly indicates that the notices of the dates when the inquiry was to be held in fact were sent on the address which was furnished by the petitioner. It is further reflected that though some of the letters were duly served on the petitioner and he has given acknowledgment of having received the same, but still the petitioner did not attend the inquiry.

12. He also invited our attention to the reasoning of the Tribunal. He submitted that the inquiry has been conducted in consonance with the principles of natural justice. According to him, the petitioner did not participate in the inquiry.

13. We have heard learned Counsel. From the record it is seen that the petitioner attended the inquiry on 13/9/2004 and 11/10/2004. From the chart which is set out in the inquiry officer's report it is obvious that though the letters were sent to the petitioner from time to time informing him about the inquiry

proceedings, the petitioner did not attend the inquiry. It is not as if the petitioner was not aware of the inquiry proceedings in as much as he has attended the inquiry on at least on two occasions. After informing the petitioner about next date of hearing, if the petitioner does not attend the inquiry, it cannot be said that the petitioner was not given sufficient opportunity during the course of the inquiry proceedings. On the basis of the evidence on record Inquiry Officer proceeded to submit the inquiry report. Witnesses were examined during the course of inquiry. Based on the materials on record a finding has been recorded that the petitioner has removed the official papers and hidden them behind the window adjacent to the toilet on the 7th floor. The witness No.5 Jayantibhai has deposed that the petitioner opened the Almirah of the Duty Officer and removed some papers. It has further come in the evidence that on being questioned by the Addl. S.P. - Witness No.4, the petitioner initially denied that he had not removed anything from the office premises, but later he admitted that he had removed the documents and also pointed out the place where the bundle was

hidden i.e. on the 7th floor behind the window. The Inquiry Officer based on these materials came to the conclusions that the petitioner failed to maintain devotion to duty and acted in a manner unbecoming of a public servant by removing the official documents from the office premises during the intervening night on 28-29/01/2004 for ulterior motive whereas his duty was to lock all the doors of the office premises and also to ensure the security of the office.

14. In this view of the matter, we do not find any error in the order passed by the Tribunal so as to warrant any interference in the exercise of our writ jurisdiction under Article 226 of the Constitution of India.

15. The Writ Petition is accordingly dismissed with no order as to costs.

(M.S.KARNIK, J.)

(ACTING CHIEF JUSTICE)