

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

WRIT PETITION NO. 6175 OF 2015

The State of Maharashtra	...Petitioner
Versus	
Ramchandra Soma Mahale	...Respondent

Mr. O. M. Kulkarni – AAGP for Petitioner.
Mr. J. N. Kamble for Respondent.

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

DATE : 13th MARCH 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 9th July 2014 made by the Maharashtra Administrative Tribunal (MAT) allowing Original Application No. 101 of 2014 instituted by the respondent questioning

the order dated 16th March 2012 imposing major penalty upon the respondent.

4] Mr. Kulkarni, the learned AAGP for the petitioner submits that the MAT has virtually re-assessed and re-appreciated the material on record before the enquiry officer and the disciplinary authority as if, the MAT, was exercising appellate jurisdiction in the matter. He submits that from the impugned judgment and order, it is not quite clear whether the MAT has interfered with the impugned order on the ground of any alleged delay in the conclusion of the enquiry proceedings. On one hand, the impugned judgment and order states that the MAT is not inclined to terminally abate the proceedings and the impugned order is based on the ground of delay. However, on the other hand, from the perusal of the impugned order, the aspect of delay has also been taken into consideration by the MAT without advertent to several other material aspects like gravity of charges, the reasons for the delay (if any) and most importantly, the issue of prejudice. Mr. Kulkarni submits that no prejudice whatsoever was demonstrated by the respondent before the enquiry officer and therefore on mere

ground of delay, there was no case made out to interfere with the disciplinary proceedings. Mr. Kulkarni submits that serious charges had been levied against the respondent and in comparison, the penalty imposed is not that of dismissal or even removal from service. In such circumstances, the MAT, was not at all justified in interfering with the order impugned before it.

5] Mr. Kamble, the learned counsel for the respondent submits that the MAT has rightly adverted to the rules and concluded that the charge of misconduct was not proved. Mr. Kamble submits that there was undue delay in conclusion of the enquiry proceedings and this aspect has been not rightly considered by the MAT. Mr. Kamble submits that the MAT is entitled to interfere with the findings recorded by the enquiry officer where such findings are found to be perverse and contrary to the weight of evidence on record. Mr. Kamble points out that in the present case, the enquiry officer, had not appreciated the statutory rules as well as the procedure in submission of bills or abstract bills. The MAT, after adverting to such statutory rules and procedures has quite rightly interfered

with the findings recorded by the enquiry officer. Mr. Kamble submits that there is absolutely no jurisdictional error in the impugned judgment and order and therefore this court may be pleased to dismiss this petition.

6] For the order which we propose to make, it is not necessary to delve into the details of the matter. From the perusal of the impugned judgment and order, we find substance in the contention of Mr. Kulkarni that the MAT has virtually, re-assessed and re-appreciated the evidence on record before the enquiry officer and interfered with findings of fact on such basis. Taking into consideration the limited scope of judicial review in examining findings of disciplinary authorities, we are of the opinion that such an exercise ought not to have been undertaken by the MAT.

7] In ***Union of India & Ors. vs. P. Gunasekaran***¹, 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

1 AIR 2015 SC 545

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 Tribunals 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.

(emphasis supplied)

8] Applying the aforesaid principles, we find that the impugned judgment and order, in which, the MAT, has virtually re-appreciated and reassessed the material on record before the enquiry officer or the disciplinary authorities, is required to be set aside.

9] From the perusal of the impugned judgment and order, again, it is not quite clear as to the weight which the MAT has assigned to the aspect of delay in initiation and conclusion of the departmental inquiry.

10] In **Anant R. Kulkarni vs. Y. P. Education Society & Ors.**², the Hon'ble Supreme Court has held that the court/tribunal should not generally set aside the departmental enquiry, and quash the charges on the ground of delay in initiation of disciplinary proceedings, as such a power is *de hors* the limits of judicial review. In the event that the court/tribunal exercises such power, it exceeds its power of judicial review at the very threshold. Therefore, a charge-sheet or show cause notice, issued in the course of disciplinary proceedings, cannot ordinarily be quashed by the court. The same principle is applicable in relation to there being a delay in conclusion of disciplinary proceedings. The facts and circumstances of the case in question, must be carefully examined, taking into consideration the gravity/magnitude of charges involved therein. The Court has to consider the seriousness and magnitude of the charges and while doing so the Court

2 (2013) 6 SCC 515

must weigh all the facts, both for and against the delinquent officers and come to the conclusion, which is just and proper considering the circumstances involved. The essence of the matter is that the court must take into consideration all relevant facts, and balance and weigh the same, so as to determine, if it is in fact in the interest of clean and honest administration, that the said proceedings are allowed to be terminated, only on the ground of a delay in their conclusion. (Vide: *State of U.P. v. Brahm Datt Sharma*, AIR 1987 SC 943; *State of Madhya Pradesh v. Bani Singh* AIR 1990 SC 1308; *State of Punjab v. Chaman Lal Goyal*, (1995) 2 SCC 570; *State of Andhra Pradesh v. N. Radhakishan*, AIR 1998 SC 1833; *M. V. Bijlani v. Union of India*, AIR 2006 SC 3475; *Union of India v. Kunisetty Satyanarayana*, AIR 2007 SC 906; *Ministry of Defence v. Prabhash Chandra Mirdha*, AIR 2012 SC 2250; and *LIC v. A. Masilamani*, JT (2012) 11 SC 533).

11] Again, we find that there is no clarity in the impugned judgment and order as regards the weight which the MAT has assigned to the aspect of delay in initiation and conclusion of the departmental proceedings. However, it is

quite clear that the MAT, has not even adverted to the principles laid down by the Hon'ble Supreme Court in the case of *Anant R. Kulkarni (supra)*. For this reason also, interference with the impugned judgment and order made by the MAT is warranted.

12] Mr. Kamble has however submitted that the respondent must be given an opportunity to demonstrate that the findings recorded by the enquiry officer or accepted by the disciplinary authority suffer from perversity. He submits that the respondent must also be given an opportunity to establish that the delay in the conclusion of enquiry proceedings has indeed occasioned very serious prejudice to the respondent.

13] Ordinarily, in a matter of this nature, we would have disposed of the petition by setting aside the impugned judgment and order made by the MAT since, the approach of the MAT, was not consistent with the law laid down by the Hon'ble Supreme Court in *P. Gunasekaran (supra)* and *Anant Kulkarni (supra)*. However, we agree with Mr. Kamble that this is a fit case where the respondent must be granted

an opportunity to demonstrate that the order impugned by the respondent before the MAT warrants interference even going by the restrictive parameters of judicial review explained in *P. Gunasekaran (supra)* or the principles of interference with departmental proceedings on grounds of delay as set out in *Anant Kulkarni (supra)*. Therefore, although, we propose to set aside the impugned judgment and order made by the MAT, we are of the opinion that the interests of justice will be met, if the matter is remanded to the MAT for fresh decision in accordance with law and on its own merits.

14] Accordingly, we set aside the impugned judgment and order dated 9th July 2014 made by the MAT, but remand the matter to MAT for fresh disposal of OA No. 101 of 2014 in accordance with law and on its own merits by adhering to the principles laid down by the Hon'ble Supreme Court in cases of *P. Gunasekaran (supra)* and *Anant Kulkarni (supra)* in the matters of judicial review of the findings recorded by inquiry authorities/disciplinary authorities and the issue of delay in institution or conclusion of disciplinary proceedings.

15] Rule is disposed of in the aforesaid terms. There shall be no order as to costs.

16] The parties to appear before the MAT on 9th April 2018 at 11.00 a.m. and produce authenticated copy of this order.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

CHANDKA