

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.**

WRIT PETITION NO. 5094 OF 2002

Hanumant S/o. Trimbak Mali,
Age : 42 years, Occupation : Service
as Jr. Clerk working on the Establishment of
the District & Sessions Court, Osmanabad
residing at Osmanabad.

... Petitioner

Versus

1. The Disciplinary Authority
in shape of the Honourable District &
Sessions Judge, Osmanabad.
2. The Appellate Authority
in shape of the
Honourable Administrative Judge,
High Court of Judicature of Bombay,
at Mumbai.

.... Respondents

.....
Shri. Kshitij Surve h/f Shri. Hemant Surve, Advocate for the petitioner
Shri. C. K. Shinde, Advocate for respondents No. 1 to 2
Shri. K. B. Jadhavar, AGP for respondent No. 3
.....

**CORAM : S. V. GANGAPURWALA &
A. M. DHAVALA, JJ.**

DATE OF RESERVING THE JUDGMENT : 18.01.2019.
DATE OF PRONOUNCING THE JUDGMENT : 30.01.2019.

JUDGMENT (PER A. M. DHAVALA, J.) :-

1. The petitioner assails the order of District Judge,
Osmanabad dt. 23.04.2001, whereby he was held guilty in

Departmental Inquiry and his one increment was permanently stopped. The order was confirmed in Departmental Appeal before this Court.

2. Undisputedly, Reg. Civil Appeal No. 133 of 1983 against the judgment and decree in Spl. Civil Suit No. 20 of 1977 came to be dismissed in-default on 21.04.1995 but by order dt. 01.07.1998 in Misc. Application No. 49 of 1995, the same was restored to the file. That time, the petitioner was Jr. Clerk in the District Court and his co-delinquent Mr Gaikwad was senior clerk. The petitioner was charged with the accusation that it was his duty to call the record and proceedings as per the order dt. 09.07.1998 but he failed to do so and it resulted into destruction of 'C' file of Spl. Civil Suit No. 20 of 1977 on 07.10.1998. After regular inquiry, the Inquiry Officer exonerated both the delinquents but the Disciplinary Authority took a contrary view and held both the delinquents guilty.

3. a] Shri. Kshitij Surve h/f Shri. Hemant Surve, the learned counsel for the petitioner submitted that, as per para 544(2) of Civil Manual, the Record Office should have destroyed the 'C' file after 12 years from the disposal of appeal. The appeal was disposed of initially on 21.04.1995 but it was restored. Merely because the

record and proceedings was not called, the Record Office was not justified in destruction of 'C' file before due date. Therefore, the alleged disputed failure of the petitioner to call the record & proceedings cannot be said to be the cause for destruction of 'C' file on 07.10.1998.

b] Secondly, he submitted that there was no order for calling the record and proceedings. The order dt. 09.07.1998 showing restoration of appeal and issuing notices was in black ink with signature of Presiding Office in black ink. Subsequently, the words 'Call R&P' of lower court are interpolated in blue ink in different font and in different handwriting. The Disciplinary Authority ignored this material defect and did not permit the petitioner to examine the document through Handwriting expert.

c] He also submitted that, the Disciplinary Authority did not comply with the provisions of Rule 9(2) and, therefore, the impugned order is not sustainable.

4. Per contra, Mr K. B. Jadhavar, learned Assistant Government Pleader for respondent No. 3 and Mr C. K. Shinde, learned counsel for respondents No. 1 and 2 supported the impugned

order. They claimed that, the Presiding Officer was examined and he has stated that, there was no interpolation in the order. There was corresponding Roznama showing the direction to call R&P. The learned District Judge, Osmanabad committed no mistake. The appeal deserves to be dismissed. In the writ jurisdiction, this court cannot sit over as an appellate authority and cannot enter into correctness of the factual aspects.

5. We have carefully gone through the record and carefully considered the arguments canvassed.

6. No doubt, in the writ jurisdiction, the scope of this court is limited and this court cannot act like an appellate authority. In the case of *High Court of Judicature at Bombay vs. Shashikant Patil* reported in *AIR 2000 SC 22*, the scope is explained in following words.

“Interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under [Article 226](#) of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such inquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. But we cannot overlook that the departmental authority (in this case the

Disciplinary Committee of the High Court) is the sole judge of the facts, if the inquiry has been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution of India.” (Underlining by us).

7. With regard to the power of disciplinary authority to dissent from the conclusion of the Inquiry Officer, it is held in this case that,

“To say that when the Disciplinary Committee differs from the finding of the Inquiry Officer it is imperative for the disciplinary authority to discuss the materials in detail and contest the conclusion of the Inquiry Officer, is quite unsound and contrary to the established principles in administrative law. The disciplinary Committee is neither an appellate nor a revisional body over the Inquiry Officer's report. It must be borne in mind that the inquiry is primarily intended to afford the delinquent officer a reasonable opportunity to meet the charges made against him and also to afford the delinquent officer a reasonable opportunity to meet the charges made against him and also to afford the punishing authority with the materials collected in such inquiry as well as the views expressed by the Inquiry Officer thereon. The findings of the Inquiry Officer are only his opinion on the materials, but such findings are not binding on the disciplinary authority as the decision making authority is the punishing authority and, therefore what authority can come to its own conclusion, of course bearing in mind the views expressed by the Inquiry Officer. But it is not necessary that the disciplinary authority should 'discuss materials in detail and contest the conclusions of the Inquiry Officer'. Otherwise the position of the disciplinary authority would get relegated to a subordinate level.”

8. In J. A. Naikasatam vs. Prothonotary and Senior Master, Bombay High Court, Bombay reported in 2004 (8) SCC 653, it was

held that, when finding of Inquiry Officer was in favour of delinquent and the disciplinary authority takes a contrary view, giving of opportunity of hearing to delinquent is necessary even if the requirement may not have been contemplated by the Rules. However, the opportunity of personal hearing is not essential. Where the delinquents were given a copy of tentative decision of disciplinary authority and they furnished detailed explanation, the principles of natural justice were fully complied with. There was no infraction of rules or infirmity in the said decision.

9. Coming to the facts of the present case, in the first place, we find that the learned District Judge as a Disciplinary Authority did not take into consideration the interpolation of the words 'Call R&P' in the order which is very much apparent. The entire text of the order and the signature are in black ink; whereas the words 'Call R&P of lower Court' are in blue ink in different font and perhaps different handwriting. The request for sending the same to the Handwriting Expert was rejected. Besides, there is material to show that, when a report about destruction of 'C' file was sent, the Co-delinquent Mr Gaikwad called the papers and there is a chit attached to the record in the handwriting of his assistant Mr Kokate. The Addl. District Judge Mr P. B. Patil was unable to identify the

handwriting of Mr Gaikwad, therefore, his evidence that the order 'Call R&P' was there has no value. Besides, there is no explanation why the said order was in different ink and why it was not initialed. The Roznama showing the order of 'Call R&P' was on a different paper and it can be manipulated. Thereafter, in August-1998, the matter was taken on Board and was adjourned to the next date which does not show that the matter was adjourned for receiving the R&P. The petitioner had issued notice to the respondents as per the order. There is no explanation why he would not call R&P from the Record Room.

10. Even if it is assumed that he did not Call R&P, still it is not material defect or dereliction of duty which can attract a departmental enquiry. The resultant destruction of 'C' file is the main cause and the Disciplinary Authority failed to consider that, mere act of not calling the R&P cannot be the cause for destruction of 'C' file. It is rightly argued that, the record keeper and the staff from the Record Office did not follow the provisions of law as per 544 (1) (2) of Civil Manual before destruction of 'C' file. They were really guilty for destruction of 'C' file before time. They have been spared and only because the R&P was not called, the petitioner was subjected to departmental enquiry. As per para 544(2), the period of 12 years for

destruction of 'C' file is to be calculated from the date of final decree or order. Even if any application for setting aside ex-parte decree or restoration of suit is pending, the time has to be calculated from the final order in such application.

11. In the present case, the appeal was decided on 21.04.1995 and thereafter application for restoration of appeal was also filed. The same was decided on 01.07.1998 and the appeal was restored, still the record was destroyed on 07.10.1998. It was clearly contrary to the provisions of Para 544 of Civil Manual. It was duty of the Record Keeper to verify whether any appeal or any proceeding is pending or not in respect of the suit, which was not complied.

12. The observations of the District Judge that though Record Keeper should have maintained file for 12 years from the date of the order of the appellate court but the said fact alone would not exonerate the present delinquents is not the correct approach. If the 'C' file would not have been destroyed, there was no occasion for holding departmental enquiry. Mere failure or delay to comply the order of calling R&P cannot be a subject matter of departmental enquiry.

13. It is also pertinent to note that, the co-delinquent of the petitioner – Mr Gaikwad was prosecuted on the allegations that he did not call the R&P and subsequently interpolated these words in the order. The allegations against co-delinquent Mr Gaikwad are in tune with the defence of the petitioner. There was no preliminary enquiry held before initiating departmental enquiry. The allegations against Mr Gaikwad and the petitioner are contrary to each other and they could not have been prosecuted simultaneously. The Disciplinary Authority has held both guilty. If Mr Gaikwad was held guilty, the petitioner should have been acquitted. We find that, the order of Disciplinary Authority is on the very face of it arbitrary and no reasonable person could have arrived at such a conclusion. The Disciplinary Authority should not have taken such a decision particularly when the Inquiry Officer exonerated the petitioner and the Disciplinary Authority also felt that the above referred circumstances were suspicious.

14. If a Jr. Clerk does not immediately comply with the order of call R&P, it cannot be a matter of initiating departmental enquiry. The conviction in departmental enquiry does not only cause monetary loss but the future prospects of the employee are adversely affected. In *M. S. Bindra Versus Union of India and others* reported

in (1998) 7 SCC 310, it was held that, doubt of integrity should not be entertained merely on surmises. It should be based on preponderance of probability as judged from the standard of a reasonable man.

15. As per Rule 9(2) of Discipline & Appeal Rules, if the Disciplinary Authority does not agree with the finding of Inquiry Officer and holds him guilty, it shall record its reasons for such disagreement and as held in J. A. Naikasatam (supra), it should give opportunity of hearing to the delinquent. The order of disciplinary authority does not show the compliance of the above procedure, in tune with the principles of natural justice.

16. In the light of these facts, the impugned order is not sustainable. Hence, the petition is allowed. The impugned order is set aside. The petitioner is exonerated of the charges in the inquiry held against him. The necessary consequences shall follow.

17. The writ petition accordingly stands disposed of. No order as to costs.

[A. M. DHAVALE]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

Punde