

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.3248 OF 2020

- 1. The State of Maharashtra,**
through its Secretary,
Rural Development & Water
Conservation Department,
Mantralaya, Mumbai.
 - 2. The Commissioner (Agriculture),**
Commissionerate,
State of Maharashtra,
Pune.
 - 3. The Regional Joint Director (Agriculture),**
Civil Lines,
Nagpur.
- ... Petitioners**

Versus

Wasudeo Madhukarrao Pande,
Aged about 60 years,
Occupation : Retired Agriculture Officer,
R/o Plot No.41, Ganesh Colony,
Pratap Nagar, Nagpur.

... Respondent

Ms N.P. Mehta, Assistant Government Pleader for Petitioners.
Mr. Shaikh Majid, Advocate for Respondent.

CORAM : DIPANKAR DATTA, C.J. & A.S. CHANDURKAR, J.

DATE : JULY 23, 2021

ORAL JUDGMENT (Per DIPANKAR DATTA, C.J.) :

- 1.** Original Application No.170 of 2015, on the file of the Maharashtra Administrative Tribunal, Bench at Nagpur (hereafter “the Tribunal”, for short) has been allowed by a judgment and order dated January 24, 2019. By presenting

this writ petition, the petitioners (who were the respondents in the said original application) have laid a challenge to such judgment and order.

2. The facts reveal that the respondent, who was the original applicant before the Tribunal, was suspended by an order dated September 30, 1999, in contemplation of disciplinary proceedings. Such order of suspension stood revoked on January 12, 2001 and, accordingly, the respondent resumed service. More than five years later, on February 3, 2006 to be precise, charge-sheet memorandum was issued against the respondent by the petitioner no.3. The six charges levelled against the respondent, *inter alia*, included a charge accusing him of having indulged in irregularities in discharge of official duties while he was working at Nagbhid during 1998-99 under the control of the Sub-Divisional Soil Conservation Officer, Bramhapuri, resulting in misappropriation of Government funds. The respondent replied to the charge-sheet on March 27, 2006. An inquiry followed. The Inquiry Officer in his report dated October 22, 2008 held that four of the six charges levelled against the respondent stood proved. The report of inquiry being furnished to the respondent, he submitted a detailed reply dated April 13, 2009. More than forty-two months after submission of such reply, the

Disciplinary Authority of the respondent passed an order of penalty dated November 3, 2012 directing recovery of Rs.1,94,497/- from the respondent as well as reducing two of his increments permanently. This order was followed by a further order dated December 23, 2013, whereby the period between October 18, 1999 and January 18, 2001 spent by the respondent under suspension was directed to be treated as a period under suspension. In the meanwhile, however, the respondent retired from service on attaining the age of superannuation on November 30, 2012. It is these orders dated November 3, 2012 and December 23, 2013 that formed the subject-matter of challenge in the said original application before the Tribunal, which stood allowed as noticed above.

3. The Tribunal set aside the impugned orders dated November 3, 2012 and December 23, 2013 on the sole ground that the respondent was deprived of 'fair hearing' in course of the disciplinary proceedings initiated against him. The Tribunal observed that ordinarily when a final order is set aside on the ground that the delinquent-employee was not afforded 'fair hearing', the Disciplinary Authority is granted liberty to proceed from the stage the inquiry or the proceedings, as the case may be, stood vitiated. However, since the respondent had retired from service, subjecting him to face the inquiry

afresh, at this distance of time, would result in great injustice. Considering such aspects, the Tribunal did not grant liberty to the Disciplinary Authority and allowed the said original application in terms of prayer clauses 5(2), (3) and (4). Consequently, the impugned orders dated November 3, 2012 and December 23, 2013 were set aside and the period spent under suspension by the respondent was directed to be treated as period spent on duty. There was a further direction for grant of all retiral benefits to the respondent, which he was entitled to upon superannuation.

4. It would be appropriate to note at this stage why the Tribunal returned a finding that the respondent was not afforded 'fair hearing'. Since the respondent was proceeded against under the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (hereafter "D & A Rules", for short), the inquiry into the charges levelled against him had to be conducted by the Inquiry Officer in substantial compliance with the provisions of Rule 8 thereof. Point was taken by the respondent before the Tribunal that sub-rule (20) of Rule 8 of the D & A Rules was followed in the breach by the Inquiry Officer, though mandatory in nature. Although the respondent had not examined himself as a witness in defence of the charges, he was not questioned by the Inquiry Officer generally

on the circumstances appearing against him in the evidence; instead, the Inquiry Officer, by his letter dated March 17, 2008 merely called upon the respondent to offer his submissions on the statements of witnesses which had been recorded in course of the inquiry and had been supplied to him from time to time. Such point succeeded, as it was held that a procedural safeguard provided by Rule 8 was not extended to the respondent and that the mandatory provisions of the D & A Rules had been violated by the Inquiry Officer.

5. For facility of appreciation, sub-rule (20) of Rule 8 is quoted below :

“8. Procedure for imposing major penalties

...

(20) *The inquiring authority may, after the Government servant closes his case and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him.”*

6. Before the Tribunal, reliance was placed on behalf of the respondent on a Bench decision of this Court in *Vijay s/o Shamrao Bhale v. Godavari Garments Ltd., Aurangabad*¹ for the proposition that the provisions contained in sub-rule (20) of

¹ 2011(2) Mh.L.J. 983

Rule 8 of the D & A Rules are mandatory.

7. The relevant finding of the Tribunal is challenged by Ms Mehta, the learned Assistant Government Pleader, appearing for the petitioners. According to her, the opportunity extended to the respondent to offer his submissions on the statements of the witnesses amounted to substantial compliance of sub-rule (20) of Rule 8 of the D & A Rules and the Tribunal fell in error in nullifying the impugned orders dated November 3, 2012 and December 23 2013 only on this count. Ms Mehta also submits that assuming that there was a violation of the provisions of sub-rule (20) of Rule 8 of the D & A Rules, the Tribunal was absolutely unjustified in not granting liberty to the petitioners to resume the inquiry from the stage it stood vitiated. According to her, the charges against the respondent are rather serious and he having indulged in acts resulting in misappropriation of funds, this is a fit and proper case in which liberty ought to have been granted to the petitioners to proceed against the respondent despite his retirement on superannuation.

8. Having heard Ms Mehta patiently, we did not consider it necessary to call upon Mr. Sheikh Majid, the learned Advocate for the respondent, to answer.

9. Rule 8 of the D & A Rules lays down a detailed procedure to be followed by the Inquiry Officer, appointed to conduct inquiry into charges against a Government employee in connection with disciplinary proceedings. Not only sub-rule (20) of Rule 8 but also the other provisions in the D & A Rules provide procedural safeguards as part of requirements of a 'fair hearing'. Reasonable opportunity of hearing is considered to be synonymous to 'fair hearing' and is an important ingredient of the rule of *audi alteram partem*. The rule of 'fair hearing', which embraces almost every facet of fair procedure, requires that the party proceeded against and who could be affected by reason of any final order passed in the proceedings, is given the opportunity to meet the case against him effectively. What this means is that reasonable and adequate opportunity to raise effective defence should be given to the party proceeded against or else the ultimate action of imposition of penalty based on such procedure which falls short of the requirements of a 'fair hearing' could be annulled if the procedural safeguards that the statutory rules envisage are not adhered to. We may in this connection note the celebrated opinion of Justice Felix Frankfurter of the United States Supreme Court in the decision in *Vitarelli v. Seaton*.² The learned Judge observed:

² 1859 (359) US 535

"An executive agency must be rigorously held to the standards by which it professes its action to be judged. Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed.... This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword."

The aforesaid passage has been cited with approval by the Constitution Bench of the Supreme Court in its decision in *Ramana Dayaram Shetty v. The International Airport Authority of India and others*³.

10. Based on the above, it can safely be held that every executive authority empowered to take an administrative action having the potential of visiting a party with civil consequences must take care to ensure fairness in procedure and action, so much so that any remissness or dereliction in connection therewith would be at the pain of invalidation of the decision eventually taken.

11. Keeping in mind the aforesaid guiding principle, let us test whether the action of the Inquiry Officer in not adhering to sub-rule (20) of Rule 8 of the D & A Rules and acting in

³ AIR 1979 SC 1628

substitution thereof by seeking the respondent's submissions on the depositions of witnesses, as recorded, by his letter dated March 17, 2008 amounts to substantial compliance of the said sub-rule. The answer to this question is found in paragraph 7 of the decision of the co-ordinate Bench of this Court in *Vijay Bhale* (supra), where sub-rule (20) of Rule 8 was read and interpreted. We can do no better than reproduce the opinion of the co-ordinate Bench, as under :

"7. ... On perusal of the said Rule, it is manifest that the said Rule mandates the inquiring authority to question the delinquent on the circumstances appearing against him in the evidence, so that the delinquent may get opportunity to explain any circumstances appearing in the evidence against him. In the present case, the delinquent has not examined himself. If the delinquent has not examined himself, in that case the Inquiry Officer is not left with any discretion but has to question the delinquent about the circumstances appearing against him. The use of the word shall shows that the said provision is imperative and the same is mandatory. In the first part of the said sub-rule the legislature has used the word 'may', but when the delinquent has not examined himself has used the word 'shall', which itself clarifies that the word shall has to be considered as mandatory. The use of the word 'may' at one place and 'shall' at another place in the same rule would strengthen the inference that these words have been used in their primary sense, and that 'shall' should be considered as

mandatory. The use of the word 'shall' therein as against 'may' shows that the same is mandatory. The use of the word 'shall' with respect to one matter and the used word 'may' with respect to another matter, in the same rule, would lead to the conclusion that the word 'shall' imposes an obligation. Whereas the word 'may' confers a discretionary powers. If, the delinquent has not examined himself, then it is obligatory on the inquiring authority to question the delinquent on the circumstances appearing against him in the evidence for the purposes of enabling him to explain any circumstances appearing in the evidence against him, and if the delinquent has examined himself, then the discretion vests with the Inquiry Officer to question the delinquent or not. In the present case, it is not disputed that the delinquent has not examined himself, in such circumstances it was mandatory for the Inquiry Officer to question the petitioner regarding the circumstances appearing against him. The said Rule has not been complied, and as such inquiry stands vitiated. The Division Bench of this Court in the case of Masood Alam Khan-Pathan vs. State of Maharashtra and others⁴ referred supra has also observed that rule of Audi Alteram Partem is pregnant in the sub-rule (20) of Rule 8, departure therefrom would tantamount to violation of natural justice. On this count itself the inquiry vitiates, there cannot be any doubt that by non-observance of the said rule the petitioner could not get the opportunity to explain regarding the circumstances which were prejudicial to him in the evidence."

12. While sharing the views expressed by the co-ordinate Bench in *Vijay Bhale* (supra), we may also place on record that much the same view has been expressed by the Calcutta High Court in its decision in *Gopal Chandra Barik v. Punjab National Bank*.⁵ Hon'ble S.B. Sinha, J. (as His Lordship then was), upon considering a *pari materia* provision in Regulation 6(17) of the Punjab National Bank Officers Employees' (D & A) Regulations, 1977, held that non-grant of opportunity of the nature envisaged in Regulation 6(17) would result in violation of a procedural safeguard provided by statutory regulations to the delinquent officer and that it was obligatory on the part of the Inquiry Officer to comply with the said provision generally.

13. A similar provision is found in Section 313 of the Code of Criminal Procedure, 1973. Although in *Gopal Chandra Barik* (supra) it has been held that the decision of the Supreme Court in *Sharad Birchichand Sarda v. State of Maharashtra*⁶ cannot be apposite in disciplinary proceedings, the object and purpose that sub-rule (20) of Rule 8 of the Discipline and Appeal Rules seeks to achieve cannot be over-emphasized. The relevant rule ordains that the delinquent employee upon being generally questioned, must be made aware of the circumstances in the evidence appearing against him. The object of providing adequate and reasonable opportunity of defence and the

⁵ 1999(2) SLR 517

⁶ AIR 1984 SC 1622

purpose of making the delinquent aware of the circumstances in the evidence that could be relied on against him while the report of inquiry is prepared cannot be achieved by calling upon the delinquent employee to make his submissions on the depositions of witnesses which have been recorded in course of the inquiry. We, therefore, see no reason to accept the contention of Ms Mehta that the letter dated March 17, 2008 issued by the Inquiry Officer ought to be treated as substantial compliance of sub-rule (20) of Rule 8 of the D & A Rules. We hold that the Inquiry Officer, on his own, devised a procedure that Rule 8 does not postulate.

14. Moving on to the other contention of Ms Mehta, we find it to be attractive at first blush. However, on deeper scrutiny, we find no reason to tinker with the discretion exercised by the Tribunal in not granting liberty to the petitioners to resume the inquiry from the stage it stood vitiated. From the preface of the factual events leading to institution of the said original application before the Tribunal, it can be noticed that although disciplinary proceedings against the respondent were in contemplation as on the date of the order of suspension, i.e. September 30, 1999, it took the Disciplinary Authority more than 6½ years to issue the charge-sheet. It could be true that not only the respondent but several other Government

employees had to be proceeded against jointly since the incidents of irregularities were common, but we feel that an inordinately long period of time was taken to draw up charges against the respondent. Not only that, the order of penalty dated November 3, 2010 was passed nearly 3½ years of receipt of the respondent's reply against the inquiry report dated October 22, 2008. The reason for the Disciplinary Authority to take such a long time to conclude the proceedings has not been explained. It is also not explained as to why more than a year thereafter, an order had to be made on December 23, 2013 in regard to the period spent by the respondent under suspension. It is of significance to note that the respondent retired on November 30, 2012 and the last order was passed a year later. It is true that the said original application before the Tribunal took more than four years to be finally decided; yet, the unduly long period taken by the Disciplinary Authority at various stages of the disciplinary proceedings appears to us to be indefensible in the absence of any explanation in support of such delay. The Tribunal although did not cite specific reasons why it would be inappropriate to grant liberty, for the reasons that we have discussed it is clear that no illegality was committed in declining the liberty to the petitioners to resume the inquiry.

15. For the foregoing reasons, we hold that this Writ Petition has no merit. The same stands dismissed, without, however, any order as to costs. If the retiral benefits have not been released in favour of the respondent, the same ought to be released as early as possible but positively within three months from date of receipt of a copy of this order.

(A.S. Chandurkar, J.)

(Chief Justice)