

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

WRIT PETITION NO. 6747 OF 2019

Miss Kavita Bhagwat Marathe,
Age : 30 Years, Occu. : Nil – Dismissed
as L.D.C. (H.R.) under Respondents,
R/o Plot No. 20, Mukteshwar Nagar,
Nashirabag, Tq. & Dist. Jalgaon. .. Petitioner

Versus

1. Maharashtra State Electricity
Distribution Company Limited
Through its Joint Managing Director,
MSEDCL, Mill Corner, Aurangabad.
2. The Superintending Engineer,
Maharashtra State Electricity
Distribution Company Limited,
Operation & Security Circle, Jalgaon.
3. The Executive Engineer,
Maharashtra State Electricity
Distribution Company Limited,
MSEDCL, Urban & Rural Division,
Jalgaon. .. Respondents

Shri Ajay S. Deshpande, Advocate for the Petitioner.
The Respondent Nos. 1 and 2 are served.
Shri A. M. Gaikwad, Advocate for the Respondent No. 3.

**CORAM : MANGESH S. PATIL AND
SANDEEP V. MARNE, JJ.**

CLOSED FOR JUDGMENT ON : 26.09.2022
JUDGMENT PRONOUNCED ON : 30.09.2022

JUDGMENT (*Per Sandeep V. Marne, J.*) :-

. Rule. Rule made returnable forthwith. With the consent

of parties taken up for final hearing.

2. By the present petition, the petitioner challenges order dated 26.06.2018, by which penalty of dismissal from service is imposed upon her. She also challenges the orders rejecting first appeal, second appeal as well as mercy appeal passed on 07.07.2018, 29.10.2018 and 02.01.2019 respectively.

3. Petitioner, while working as a clerk, was issued with memorandum of charge sheet dated 18.12.2017 initiating disciplinary proceedings against her on the charge of abusing and assaulting Deputy Executive Engineer on 25.10.2017. It appears that before issuance of the memorandum of charge sheet dated 18.12.2017, a preliminary enquiry was conducted behind her back, in which statements of various witnesses were recorded. Such prerecorded statements were to be relied upon in the course of enquiry.

4. The enquiry was conducted only on one day i. e. 04.05.2018. Admittedly, not even single witness was summoned in the enquiry for deposition. Therefore, question of petitioner cross examining them did not arise. The enquiry officer took into consideration the prerecorded statements of the witnesses and submitted his report holding that the charges leveled against her were proved. After receipt of the enquiry officer's report, the petitioner was issued with show cause notice on 21.05.2018 calling upon her to explain as to why penalty of dismissal from service should not be imposed. She submitted reply on 02.06.2018. Thereafter disciplinary authority proceeded to pass order dated 26.06.2018 imposing penalty of dismissal from

service. Her first, second and mercy appeals came to be rejected by orders dated 07.07.2018, 29.10.2018 and 02.01.2019 respectively. These orders are under challenge before us.

5. Appearing for the petitioner, Mr. Deshpande, learned counsel would submit that the findings recorded by the enquiry officer and disciplinary authority are vitiated on account of absence of any evidence being recorded in the enquiry. He would submit that the impugned orders suffer from the vice of perversity. That the principles of natural justice were given a complete go-bye while holding the petitioner guilty of misconduct. She was not given any opportunity to cross examine the witnesses, who never turned up for enquiry. He would rely upon following decisions of the Apex Court.

- i. Roop Singh Negi Vs. Punjab National Bank and others reported in AIR 2008 SC (Supp) 921.
- ii. Ministry of Finance and another Vs. S. B. Ramesh reported in AIR 1998 SC 853.
- iii. Union of India and others Vs. Naman Singh Shekhawat reported in (2008) 4 SCC 01.
- iv. Mini Shankar Vs. Union of India and another reported in (2008) 3 SCC 484.

6. Mr. Deshpande would also rely on the decision of Single Judge of this Court in the case of **Chief Engineer Latur Zone and Competent Officer MSEDCL and another Vs. Nathuram Wamanrao Mundhe**, Writ Petition No. 11616 of 2018 decided on 20.02.2020.

7. Per contra, Mr. A. M. Gaikwad, learned counsel appearing for the respondent-company would support the orders passed in the disciplinary proceedings. He relies upon the provisions of the MSEDCL Employees' Service Regulation 2005 (for short 'Regulations 2005') in support of his contention that the regulations do not provide for examination of witness or providing opportunity of cross examination. He submits that statements of all the witnesses were recorded and provided to the delinquent employee and that she was given opportunity of explaining her innocence. He would, therefore, submit that the findings recorded in the disciplinary enquiry are based on evidence and prays for dismissal of the petition.

8. We must state at the outset that we are appalled by the manner in which the disciplinary proceedings have been conducted by the Respondent Company. The charge of abuse and assault has been held to be proved without examining any witness. Such course of action is sought to be justified relying on provisions of the service Regulations 2005, which do not contain any provision for examination of prosecution witnesses and for providing an opportunity to the delinquent employee to cross examine them. Regulation 88 (b) to (g) of the Regulations of 2005 provide as under :

88. PROCEDURE FOR DEALING WITH ACTS OF MISCONDUCT

(a)

(b) CHARGE-SHEET

An employee against whom action is proposed to be taken for any act of misconduct shall be provided

with a copy of the charge or charges (Annexure 2) as well as a statement of allegations that have been made against him and over which enquiry is being held.

(c) SUBMISSION OF WRITTEN STATEMENT

The employee charged for an act of misconduct shall be required within 7 days of the receipt of the charge-sheet by him, to put in a written statement of his defense, if any, and to state whether he desires to be heard in person.

(d) ORAL STATEMENT

The employee charged shall be given an opportunity to make an oral statement if he so desires in addition to any written statement submitted by him.

(e) INSPECTION OF DOCUMENTS

Copies of the relevant documents, if any, should be supplied to the employee charged, free of cost alongwith the charge-sheet and the statement of allegations as far as practicable. Copies of recorded statement, if any, should also be supplied. If it is not practicable to supply copies, the employee charged may be allowed to take copies or have copies made at his cost and all reasonable facilities shall be given to him enable this to be done. Copies of documents and statements which are not to be used against the employee charged need not be supplied or allowed to be taken. In dealing with request for copies of relevant documents a liberal view as possible should be taken since the employee charged can put forth the plea that he was handicapped in preparing his defense for want of documents.

Note: As far as possible the notice served on an employee should be self contained and should be accompanied by copies of documents which are not confidential and which are considered essential for the person concerned to prepare his explanation. If the employee concerned desires to inspect any proceedings in addition, the Enquiry Officer should decide whether it

is really necessary for the employee concerned to inspect them and if so in case copies thereof cannot be supplied to him, the Enquiry Officer should send the relevant papers to the Officer under whom the latter serves to make them available to the employee concerned for inspection under his supervision. In case, the Enquiry Officer finds it inconvenient to send the papers to the other office, he may instruct the employee concerned to come to his office to inspect them. In the latter case, the employee shall be eligible to one fare to and fro of the class to which he is eligible and also one day's Daily Allowance. Before asking the employee to come to his office, in addition to considering whether it is necessary for the employee concerned to inspect the documents, he should also consider whether the employee cannot prepare the explanation without inspecting the paper, i.e. whether it is essential for him to inspect the papers and his defense will suffer for want of those papers. In case he is satisfied that it is not essential for the employee to inspect the papers, the employee should be informed that he will have to travel at his own cost.

(f) PRODUCTION OF DOCUMENTS AND OTHER EVIDENCE BY THE EMPLOYEE

An employee will be required to produce his documents if any, alongwith his written statement; but such evidence may not be rejected merely because it is produced late. The Enquiry Officer may admit relevant evidence, documentary or otherwise provided by either side at any stage before the final order is passed.

(g) RECORDING OR ORAL EVIDENCE

- I) Oral evidence may be recorded by the Enquiry Officer if he permits any witness to be produced by either side.
- ii) The evidence of such witness will be recorded in English or in the regional language. After the evidence of the witness is completed, it shall be read

out to him and if necessary explained to him in the language in which it was given. It shall be corrected if necessary, and then signed both by the Enquiry Officer and the witness. If the witness denies the correctness of any part of the evidence when it is read out to him, the Enquiry Officer may correct the statement and if the Enquiry Officer does not agree, he may make a Memorandum thereof of the objection taken to it by the witness and may add such remarks as he deems necessary. The employee may be allowed to take copies of the statement.

9. This Court had, on an earlier occasion, expressed anguish about absence of provision in the service regulations to give an opportunity to the delinquent employee to cross examine the witness. In the case of **Chief Engineer Latur Zone and Competent Officer MSEDCL** (supra) respondent company was in fact advised to have a re-look at Regulation 88(b) to (g) of the Regulations 2005 and to ensure that it is brought in tune with the crystalized position of law. In para 23, Single Judge of this Court has held as under :

23. Before I part with this matter, I deem it appropriate to bring it to the notice of the Petitioner, through their learned Advocate, to advise the Petitioner to have a re-look at Regulation 88(b) to (g) and ensure that it is in tune with the crystalized position of law as is discussed in this judgment. Since the entire procedure prescribed is defective and appears to be against the crystalized procedure of conducting departmental enquiries, it would be in the interest of justice, that the petitioner organization would amend and re-draft the said regulations.

10. Mr. Deshpande, learned counsel appearing for the petitioner submits that, despite of passing of the aforesaid

directives by this Court, the respondent-company has failed to amend the service Regulations 2005. Be that as it may. We find that non examination of witnesses in the enquiry and failing to provide an opportunity of cross examination to the petitioner has vitiated the entire disciplinary proceedings. Statements recorded during the course of preliminary enquiry held at the back of the petitioner cannot be relied upon as if the same forms part of evidence on record. Consequently, there is no evidence on record to hold the petitioner guilty of the misconduct alleged and the finding of guilty recorded is perverse and capricious.

11. In the decisions of the Apex Court in the case of **Roop Singh Negi, S. B. Ramesh, Naman Singh Shekhawat and Moni Shankar** (supra), relied upon by Mr. Deshpande, it has been repeatedly held that the findings recorded in the disciplinary enquiry without following principles of natural justice become perverse and that such evidence is required to be ignored. In the present case, there is complete non observance of principles of natural justice while holding the petitioner guilty of misconduct alleged. Consequently, the dismissal order deserves to be set aside.

12. Since the penalty is being set aside on account of non-observance of principles of natural justice, the correct course of action to be adopted by us is to permit the respondent-company to conduct *de novo* enquiry into the charges by following the principles of natural justice. Since the respondents are to be given an opportunity to conduct *de novo* enquiry, the intervening period from the date of dismissal to the date of reinstatement is required to be treated as suspension at the moment. Depending upon

outcome of the *de novo* inquiry, decision to treat suspension period as duty or otherwise can be taken.

13. Consequently, the petition succeeds and we proceed to pass the following Order:

ORDER

- (i) The dismissal order dated 26.06.2018 as well as the orders passed in the first, second and mercy appeals on 07.07.2018, 29.10.2018 and 02.01.2019 respectively are set aside.
- (ii) The respondent-company is directed to reinstate the petitioner in service forthwith.
- (iii) The intervening period from the date of dismissal till the date of reinstatement be treated as suspension at the moment and the Petitioner be paid subsistence allowance as per Rules & Regulations in respect thereof within 2 months from today.
- (iv) It would be open for the respondent-company to conduct *de novo* enquiry against the petitioner, if they are so advised, after following principles of natural justice. If a decision is taken to conduct *de novo* inquiry, the same shall be concluded by passing final order within 6 months from today.
- (v) Depending upon the outcome of *de novo* inquiry, if conducted, decision to treat the suspension period as duty or otherwise be taken.
- (vi) In the event Respondents choose not to conduct *de novo* inquiry and/or the inquiry proceedings are not concluded within 6 months from today, the entire period

from date of dismissal till the date of reinstatement, which is momentarily to be treated as suspension, shall be treated as duty for all purposes including backwages.

(vii) Rule is made absolute in above terms.

(viii) There shall be no order as to costs.

[SANDEEP V. MARNE, J.]

[MANGESH S. PATIL, J.]

bsb/Sept. 22