

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

Writ Petition No. 931 of 2019

Sham S/o Venkatesh Khanzode
Aged about : 59 Years,
Occupation : Retired Officer,
R/O : C/o L. K. Pande, Saoji Chowk,
Juni Basti, Badnera,
Dist. Amravati.

... Petitioner

... Versus ...

Maharashtra State Road Transport
Corporation, Central Office,
Maharashtra Vahatuk Bhavan,
Dr. Anandrao Nair Marg,
Mumbai – 400 008.
Thru : Vice-Chairman & Managing Director.

... Respondent

Mr. S. A. Nerkar, Advocate for the petitioner
Mr. V. H. Kedar, Advocate for the respondent

**CORAM : ROHIT B. DEO AND
ANIL L. PANSARE JJ.**

DATED : 10-8-2022

JUDGMENT (Per : Rohit B. Deo, J.)

Rule. Rule made returnable forthwith. With consent, the
petition is finally heard.

2. Petitioner was working as Deputy Mechanical Engineer in
Akola Division of Maharashtra State Road Transport Corporation

(Corporation) till he superannuated on 30-6-2017. Petitioner is assailing the order dated 27-6-2017 issued by the competent authority of the Corporation whereby punishment of reduction of pay by three stages with cumulative effect is imposed on the premise that the allegations levelled against the petitioner in charge-sheet dated 7-6-2017 are duly proved.

3. Petitioner has twin submissions to canvass. The first submission is that even if the record of the enquiry is taken at face value, no case of misconduct is made out. The other submission is that the enquiry was a ritualistic formality and every established and recognized principle of natural justice was thrown to the wind.

4. We may now consider the allegations which the Corporation levelled against the petitioner.

5. It appears that on 25-5-2016, ten reports were forwarded to the petitioner for issuance of charge-sheet to the delinquent Security Guards. While the contours of the allegations against the Security Guards are blurred, record indicates that the issue was the alleged colour blindness of the Security Guards.

6. One of the ten cases which were forwarded to the petitioner for issuance of charge-sheet was pertaining to Mr. M. T.

Tayde. However, since Mr. M. T. Tayde superannuated on 31-5-2016, the charge-sheet was not taken, and indeed could not have been taken, to its logical end.

7. In the affidavit in response dated 5-10-2021 filed by the Corporation, paragraph 5 is relevant and reads thus :

5. That, the Competent Authority has commented on the report to issue charge sheet immediately to the said delinquent. In connection with the report, a charge-sheet was filed against Shri M. T. Tayde. In the said charge-sheet, the reports were submitted of color-blindness case of Shri M. T. Tayde for a period between 20/05/2016 to 22/05/2016 alongwith other 35 delinquent Drivers. On 25/05/2016, 10 reports were sent to the Deputy Mechanical Engineer, M.S.R.T.C. for giving charge-sheet to such delinquent Security Gaurds but as per Letter No. 182/2016 dated 18/04/2016, Shri M. T. Tayde got superannuated on 31/05/2016. According to Discipline and Appeals Procedure, after giving charge sheet to any employee, 15 days period is granted to such employee to Competent Authority to give reply to the charge sheet and there is no power granted in Discipline and Appeals Procedure of the Corporation to curtail this period in the event of delinquent being superannuated. Although, the petitioner did not get sufficient time for this case, he did not take up the matter when he needed to do so, so the petitioner is solely responsible. Thus, the petitioner is solely held responsible for the negligence and irresponsibility of Shri M. T. Tayde at first sight.

8. While the affidavit in response admits that the petitioner did not get sufficient time to take the enquiry against Mr. M. T. Tayde to its logical end, the further averment is that “he did not take up the

matter when he needed to do so". It is not clear to us, as to what exactly the Corporation intends to convey by the said averment.

9. Despite the irrefutable factual position that the petitioner could not have taken the enquiry any further since Mr. M. T. Tayde retired within 5 days of the issuance of charge-sheet, the petitioner was served with charge-sheet dated 7-6-2017 alleging commission of misconduct, covered under items 8, 9, 10, 11 and 22 of Schedule A to the Discipline and Appeal Rules of the Corporation. The most serious misconduct alleged appears to be that envisaged under item 11 which refers to conduct causing serious loss to the Corporation.

10. Petitioner submitted explanation to the charge-sheet dated 7-6-2017 on the very same day i.e. on 7-6-2017 and pointed out that since Mr. M. T. Tayde superannuated within five days of the issuance of charge-sheet, the disciplinary action could not be concluded. Petitioner further referred to the inspection tours/visits which he was at the relevant time undertaking in deference to the orders issued by the superior officer/s.

11. The Corporation acted with alacrity which can only be branded as ugly haste. Petitioner submitted the explanation on 7-6-2017 and the enquiry was scheduled on 15-6-2017. Interestingly,

the “Reporter” who is the officer, who submitted a preliminary report on the basis of which the charge-sheet was issued, did not attend the enquiry and the Enquiry Officer concluded the enquiry on the same day after putting 10 questions to the petitioner.

12. We note from record that before interrogating the petitioner by asking him to answer 10 questions, there was a preliminary interaction in which the petitioner was asked whether he needed defence representative and the petitioner responded by answering in the affirmative and further clarified that the defence representative is not available. In the preliminary interaction, the Enquiry Officer also sought the views of the petitioner on the absence of the “Reporter” and the petitioner responded by stating that the Reporter’s presence is necessary.

13. The Enquiry Officer did not adjourn the enquiry in order to enable the petitioner to engage defence representative. The Enquiry Officer was clearly in a hurry. After paying lip service to the requirement of conducting regular and structured departmental enquiry, since the misconduct alleged is a major misconduct, the Enquiry Officer who is also the competent authority issued notice dated 20-6-2017 asking the petitioner to show cause why punishment of reduction of pay scale by three stages cumulatively be

not imposed. It does not appear that a separate enquiry report was prepared. The finding of guilt is recorded in the show cause notice dated 20-6-2017.

14. Petitioner submitted reply dated 24-6-2017 reiterating that the misconduct is not proved. However, by the order impugned dated 27-6-2017, the petitioner is inflicted the punishment noted supra.

15. We have heard learned counsel for the petitioner Mr. S. A. Nerkar and learned counsel for the Corporation, Mr. V. H. Kedar.

16. We are more than satisfied that the petitioner is victimized. We note that it is virtually admitted by the Corporation that considering that Mr. Tayde superannuated within 5 days of the issuance of the charge-sheet, there was no possibility of the culmination of the enquiry, particularly considering the Discipline and Appeal Rules which mandate that the delinquent employee must be given 15 days time to submit reply to the charge-sheet. We are, therefore, of the opinion, that even if the entire record is taken at face value, no case of misconduct is made out. We are not inclined to accept the submission of Mr. Vivek Kedar that the employee exhibited

slackness or negligence much less such conduct as would cause serious loss to the Corporation.

17. We are further of the view, that the enquiry conducted was an empty ritualistic formality. The only attempt was to pay lip service to the Discipline and Appeal Rules. The competent authority was in tearing hurry to complete the enquiry presumably since the petitioner was to superannuate on 30-6-2017. Be that as it may, we do not approve of the manner in which the enquiry is conducted in as much as the misconduct alleged is major misconduct and the least which could have been done was to adjourn the hearing the moment the petitioner informed the Enquiry Officer and competent authority that he wishes to engage defence representative. We are not impressed by the submission canvassed by Mr. Vivek Kedar that since the petitioner did not prefer a separate or specific application, nor made oral request, seeking adjournment, no fault can be found with the conduct of the enquiry. We are more than satisfied that the Enquiry Officer and the competent authority had pre-decided to conclude the enquiry on the same day and, therefore, wrapped up the enquiry by putting 10 questions to the petitioner. We further note that there is no enquiry report as such and it is only in the final show

cause notice that there is an observation that the misconduct stands proved. The observation is not substantiated by reasons.

18. Be that as it may, since in our view, the misconduct is not proved, we need not delve deeper in the manner in which the Corporation has proceeded to condemn the petitioner after conducting a farcical enquiry.

19. The order impugned dated 27-6-2017 is quashed and set aside.

20. It is declared that if any amount is recovered from the petitioner by virtue of the order impugned, the same shall be refunded within the next ninety days, failing which, interest at the rate of 12% per annum shall be payable.

21. Rule is made absolute in the aforesaid terms.

(Anil L. Pansare, J.)

(Rohit B. Deo, J.)

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