

Maria S.

**IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.66 OF 2014**

Shri S. K. Kajal, son of Shri K. Kajal, of
major age, Indian National, resident of
Plot No.GPD-2-6 Type, Government of
Goa Quarters, Porvorim, Bardez-Goa-
403 001.

... Petitioner

Versus

1. The Chief Executive
Officer, Directorate of
Vigilance, Khadi & Village
Industries Commission,
having office at 3, IRLA
Road, Vile Parle (W),
Mumbai-56.
2. Khadi & Village Industries
Commission, having office
at 3, IRLA Road, Vile Parle
(W), Mumbai-56.
3. The Chairman, Directorate
of Vigilance, Khadi &
Village Industries
Commission, having office
at 3, IRLA Road, Vile Parle
(W), Mumbai-56.

...Respondents

Ms S. Bangera, Advocate *for the Petitioner.*

Mr S. N. Joshi, Advocate *with Ms Shweta S. Joshi,*
Advocate for the Respondents.

CORAM: M. S. KARNIK, J
DATED: 20th JULY 2023

ORAL JUDGMENT:

1. Heard learned counsel for the petitioner and learned counsel for the respondents.
2. The challenge in this petition under Article 226 and 227 of the Constitution of India is to an order dated 06.08.2013 issued by the Chief Executive Officer of the Directorate of Khadi & Village Industries, thereby conveying to the petitioner that his appeal filed before the Appellate Authority against the order passed by the Disciplinary Authority imposing major penalty of removal from service of the petitioner is disposed of as the appellate authority agreed with the decision of the Disciplinary Authority imposing major penalty of 'removal from service' on the petitioner.
3. The petitioner was working as Assistant Director in the Khadi & Village Industries Commission, Goa for 30 years. On 09.01.2009 a charge-sheet came to be issued to the petitioner alleging misconduct of demanding illegal gratification. The petitioner was suspended. Inquiry proceeded against the petitioner. The petitioner did not remain present on the date scheduled for the inquiry. The inquiry proceeded ex-parte. The inquiry officer returned the findings that the charges levelled are proved.
4. The disciplinary authority, i.e. the Chief Executive Officer vide order dated 01.05.2013 came to the conclusion that the charge of acceptance of illegal gratification by the petitioner has been proved and established. It was observed that the petitioner was provided with adequate opportunity for submitting his reply/representation. As the Disciplinary Authority was of the opinion that the charge established against the petitioner is very grave, the punishment of

penalty of 'removal from the service' of the petitioner was imposed in terms of Regulation No.9 (ix) of KVIC E (CCA) Regulations, 2003, ('CCA Regulations', for short).

5. An appeal came to be filed by the petitioner before the appellate authority on various grounds which form part of the appeal memo. The decision of the Appellate Authority was conveyed to the petitioner by the Disciplinary Authority vide the impugned order dated 06.08.2013 in terms of the CCA Regulations.

6. It is the contention of learned counsel for the petitioner that the inquiry proceeded in breach of the principles of natural justice. According to her the petitioner was not granted an adequate opportunity to represent his case before the Inquiry Officer. It is further the contention of the learned counsel that the notices which are referred to in the Inquiry Officer's report were never served on the petitioner. She submitted that the petitioner always wanted to participate in the inquiry; that the inquiry was conducted in utter haste and in complete defiance of the principles of natural justice. My attention is invited to the findings of the Inquiry Officer to submit that the factum of service of notices on the dates fixed is not supported by any material on record. It is further submitted by learned counsel that the order passed by the Appellate Authority is not a reasoned order. She invited my attention to the appeal memo to submit that the Appellate Authority has not adverted to any of the contentions raised in the appeal memo. It is further her contention that the Appellate Authority has not heard the petitioner before passing the impugned order. Learned counsel invited my attention to the provision of part 7 of the CCA Regulations which deals with appeals. In her submission, an elaborate procedure is prescribed for preferring the appeal and the decision to be passed thereon.

According to her, the order passed by the Appellate Authority is in complete breach of Part 7 of such Regulations. It is one of the contentions of learned counsel that the petitioner is now acquitted in the criminal prosecution that was initiated against him. It is submitted that the petitioner was acquitted very recently and during the pendency of the present petition, which is a factor which must weigh with this Court for interfering in the impugned order.

7. Shri Joshi, learned counsel for the respondents, on the other hand supported the impugned order. It is submitted by him that the petitioner failed to appear before the Inquiry Officer and, in fact, though every attempt was made to serve the petitioner, it is the petitioner who avoided the service of notice. It is contended by him that the petitioner was well aware of the ongoing inquiry and the contention that the petitioner was not heard or that the inquiry proceeded ex-parte is only a ruse to set aside the impugned order. Shri Joshi submits that the records would indicate that the petitioner was adequately served and a fair opportunity was given to the petitioner to participate in the inquiry which he deliberately avoided. It is further submitted that it cannot be said that the order passed by the Appellate Authority suffers from non-appreciation of mind. My attention is further invited to the detailed affidavit in reply filed on behalf of the respondents.

8. Heard learned counsel.

9. The charge levelled against the petitioner is undoubtedly serious. The contention raised by the petitioner before the Appellate Authority was that the inquiry was conducted in breach of the principles of natural justice. The provision regarding preferring of appeal against the penalties specified in Regulation 9 and the

procedure to be followed for dealing with the appeals is provided in Part 7 of the Regulation.

10. Regulation 19 provides that an employee may prefer an appeal against an order imposing any of the penalties specified in Regulation 9, whether made by the Disciplinary Authority or by any Appellate or Revising Authority. Regulation 20 provides for the Appellate Authority before whom an appeal may be preferred against all or any of the orders specified in regulation 19. The petitioner has filed an appeal under Regulation 20. There is no dispute that the appeal as preferred was within time. The limitation for filing such appeal is prescribed by Regulation 21. Regulation 22 provides the '**Form and contents of appeal**'. The appeal preferred by the petitioner is a substantive one and in consonance with Regulation 22.

11. It is pertinent to note that Regulation 23 deals with '**Consideration of appeal**'. Relevant portion of Regulation 23 reads thus:-

'23. Consideration of appeal.-

(1)...

(2) *In the case of an appeal against an order imposing any of the penalties specified in regulation 9 or enhancing any penalty imposed under the said regulation, the Appellate Authority shall consider-*

(a) whether the procedure laid down in these regulations has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

(b) whether the findings of the Disciplinary Authority are warranted by the evidence on the record; and

(c) whether the penalty or the enhanced

penalty imposed is adequate, inadequate or severe; and pass orders

(i) confirming, enhancing, reducing or setting aside the penalty; or

(ii) remitting the case to the authority which imposed or enhanced the penalties or to any other authority with such direction as it may deem fit in the circumstances of these cases:

(3) In an appeal against any other order specified in regulation 19, the Appellate Authority shall consider all the circumstances of the case and make such orders as it may deem just and equitable.'

12. The CCA Regulations thus lay down a comprehensive procedure for consideration of appeals. As per the CCA Regulations it is incumbent upon the Appellate Authority to consider whether the procedure laid down in the CCA Regulations has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice. It is also incumbent to test if the findings of the Disciplinary Authority so raised are warranted by the evidence on the record. The Appellate Authority has to then consider whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe and then pass appropriate orders. It is important to note that clause (3) of Regulation 23 ordains the Appellate Authority to consider all the circumstances of the case and make such orders as it may deem just and equitable.

13. To test whether the order passed by the Appellate Authority satisfies the provisions of the CCA Regulations, I may re-produce the order dated 06.08.2013 conveyed at the instance of the Appellate

Authority. No other order of the Appellate Authority is produced on record. The order reads thus:-

'CONFIDENTIAL

DIRECTORATE OF VIGILANCE
KHADI & VILLAGE INDUSTRIES COMMISSION
3, IRLA ROAD, VILLEPARLE (WEST), MUMBAI-56

No.VIG/Khadi/O/12/2013-14/92

Date: 06.08.2013

ORDER

WHEREAS the Disciplinary Authority, after a careful consideration of the charges, findings of I.O. and other documents related to the Disciplinary Proceedings decided to impose major penalty of "removal from the service" on Shri S. K. Kajal, Asstt. Director (u/s), State Office, KVIC, Goa as prescribed under Regulation No.9(vi) of KVIC E (CCA) Regulations, 2003.

AND WHEREAS, the order of Disciplinary Authority imposing the major penalty of "removal from the service" on Shri S.K.Kajal, Asstt.Director (u/s) was issued vide Order No.VIG/Khadi/O/12/2012-13/22 dated 29.4/1.5.2013.

AND WHEREAS, Shri S. K. Kajal vide letter dated 10.06.2013 had preferred an Appeal against the order of Disciplinary Authority.

AND WHEREAS, the Hon'ble Chairman, KVIC being the Appellate Authority after due consideration of the contents of Appeal alongwith the records/material facts has ***agreed with the decision of the Disciplinary Authority i.e. imposition of major penalty of "removal from the service" on Shri S.K. Kajal, Asstt.Director (u/s). The appeal thus stands disposed off.***

AND THEREFORE, the undersigned as per the provisions contained in Regulation No.24 of KVIC E (CCA) Regulations, 2003 hereby convey the above decision of the Appellate Authority.

Sd/-

CHIEF EXECUTIVE OFFICER

To

Shri S.K. Kajal,
Ex-Asstt.Director(KVIC)
Resident of Plot No.GPD 2-6 Type,
Government of Goa Quarters,
Porvorim, Bardez (Goa-403 001.

Copy to:-1. Dy.CEO, Zonal Office (WZ), Mumbai.

2. Director (Admn.), KVIC, Mumbai.

3. Director (Audit), KVIC, Mumbai.

4. State Director, KVIC, Goa.'

14. The petition was filed in the year 2014. Learned counsel urged that the legality of the Disciplinary Authority's order be tested here in this petition itself, though a challenge has been raised to the Appellate Authority's order. As indicated earlier, the charge as levelled as the petitioner is serious. Moreover, there are intervening circumstances during the pendency of the petition, as even according

to the learned counsel the petitioner has been acquitted in the criminal prosecution initiated against him. As to what is the effect of such acquittal on the disciplinary proceedings is a matter that can be raised before the Appellate Authority in the first instance. Even otherwise, a reading of the impugned order dated 06.08.2013 would indicate that the order passed is in complete breach of the CCA Regulations and the appeal has not been considered in accordance with what is prescribed by Regulation 23 of the CCA Regulations. It is the contention of learned counsel for the respondents that the CCA Regulations do not provide for oral hearing before the appeal is decided.

15. In my opinion, the order passed by the Appellate Authority is in complete non-compliance with the provisions of Regulation 23 of the CCA Regulations and also in breach of the principles of natural justice. The order is not a reasoned order. None of the contentions raised by the petitioner in the appeal memo have been considered except for stating that the Appellate Authority agreed with the decision of the Disciplinary Authority.

16. Considering that a major penalty has been imposed that of removal from service and having regard to the nature of the charges levelled against the petitioner, it would be appropriate if the Appellate Authority considers the appeal afresh and decides the same on merits in accordance with the provisions of the CCA Regulations after hearing the petitioner.

17. The impugned order dated 06.08.2013 which conveys the decision of the Appellate Authority, of having agreed with the decision of the Disciplinary Authority imposing major penalty, is set aside. Hence, the following Order:-

ORDER

(a) The impugned order of the Appellate Authority is set aside.

(b) The Appellate Authority to consider and decide the appeal preferred by the petitioner afresh and in consonance with the provision of Regulation 23 of the CCA Regulations after affording an opportunity of hearing to the petitioner.

(c) The petitioner shall appear before the Appellate Authority on 21.08.2023 at 11:00AM when the Appellate Authority will intimate the schedule of hearing to the petitioner. This shall be construed as sufficient notice to the petitioner.

(d) The appeal shall be heard on its own merits and in accordance with law. The petitioner is permitted to amend the appeal memo.

(f) The appeal to be decided as expeditiously as possible, in any case within a period of 4 months from 21.08.2023.

16. The Rule is made absolute in the above terms.

17. The petition is disposed of. No costs.

M. S. KARNIK, J

MARIA SUZANA
REBELLO

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SUZANA REBELLO
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