

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

WRIT PETITION NO.1367 OF 2012

Petitioner : Sanjay s/o Ramrao Khanzode,
Aged about 53 years, Occup. Service,
Department of Vocational Education and Training,
Industrial Training Institute, Ramtek,
Dist. Nagpur.

– Versus –

Respondents : 1. The State of Maharashtra,
Through its Secretary,
Department of Vocational Education and Training,
Mantralaya, Mumbai – 32.
2. The Director of Vocational Education and Training,
3, Mahpalika Marg, Mumbai.
3. The Deputy Director,
Vocational Education and Training,
Regional Office, Nagpur.

*Respondent No.4 stood
dismissed as per
Court's order dated
05/09/2012*

4. ~~Shri S.D. Bahendwar,~~
~~Enquiry Officer, Occ. Retired,~~
~~R/o Pragati Apartment, Laxmi Nagar, Nagpur.~~

Mr. G.N. Khanzode, Advocate for the Petitioner.
Mrs. K.R. Deshpande, A.G.P for Respondent Nos.1 to 3.

CORAM: **ROHIT B. DEO AND M.W. CHANDWANI, JJ.**
DATE : **7th JUNE, 2023.**

J U D G M E N T : *(Per M.W. Chandwani, J.)*

The petition challenges the order dated 22/09/2009 in Original Application No.473/1998 passed by the Maharashtra Administrative Tribunal, Nagpur Bench, Nagpur (*hereinafter referred to as "MAT" for short*), whereby the challenge to the order dated 04/11/1997 passed by respondent No.3 pursuant to the enquiry, has been dismissed.

02] The petitioner, a Senior Clerk, was suspended on the allegation of misappropriation of an amount of Rs.70,729/- and other allied charges. Departmental Enquiry was conducted and by an Enquiry Report dated 27/02/1997, the Enquiry Officer held the petitioner guilty of all charges including misappropriation of an amount to the tune of Rs.56,126.20. Pursuant to the said Enquiry Report, respondent No.2, the Disciplinary Authority, imposed major penalty on the petitioner of reversion for a period of five years to the post of Junior Clerk and an amount of Rs.56,126.20 was also recovered from the petitioner.

Feeling aggrieved with the findings in the Enquiry Report as well as the punishment, the petitioner preferred Original Application No.473/1998 before the MAT. After hearing, the MAT vide its order dated 22/09/2009 dismissed the original application. Against the order of dismissal of Original

Application No.473/1998, the present writ petition under Article 226 of the Constitution of India came to be filed.

03] Though the various grounds have been raised in the petition, the principal submission of the learned Counsel for the petitioner is that the petitioner on promotion to the post of Senior Clerk was posted at ITI, Rajura. At that relevant time, one Mr. Chandekar was In-charge of Accounts and Cash Section. When the petitioner joined in the Accounts and Cash Section, no procedure of handing over and taking over the charge of Accounts and Cash Department had taken place between the erstwhile employee Mr. Chandekar, In-charge of Accounts and Cash Section and the petitioner.

04] The learned Counsel for the petitioner vehemently submits that there is no written document of taking over charge by the petitioner from Mr. Chandekar, the erstwhile In-charge of Accounts and Cash Section. In absence of written document of handing over charge to the petitioner, the liability of deficit amount cannot be fixed upon the petitioner. According to the learned Counsel for the petitioner, this aspect has not been appreciated properly by the MAT. He further vehemently submits that in absence of this vital document, the petitioner cannot be held guilty for alleged misappropriation of

amount of Rs.56,126/-. On this count alone, the order of the MAT as well as findings of the Enquiry Report is/are required to be set aside.

05] The learned Assistant Government Pleader appearing for the respondents submitted that the findings of the Enquiry Officer are in accordance with law. Since the petitioner has participated in the enquiry, there is no question of not following the principles of natural justice. She supports the findings of the Enquiry Officer over misappropriation of the amount by the petitioner. She further submits that the MAT has rightly dismissed the Original Application No.473/1998 after considering the entire material on record. Therefore, the order of the MAT does not require any interference. She, however, prays for dismissal of the writ petition.

06] At the outset, we may state that the judicial review of departmental enquiry by the High Court is very limited. It is impermissible for the High Court to re-appreciate the evidence, which has been considered by the Enquiry Officer, the Disciplinary Authority and the Appellate Authority. The jurisdiction of High Court is circumscribed and confined to correct an error of law or procedural error, if any, resulting in manifest miscarriage of justice or in a case of no evidence.

07] Learned Counsel Mr. Khanzode for the petitioner submits that since there is no document on record to show that written charge of the Accounts and Cash Department was handed over to the petitioner, the case in hand is of no evidence. He vehemently submits that the High Court can exercise its jurisdiction of judicial review of the order of punishment.

08] We have perused the cross-examination of Mr. Chandekar, wherein he has testified that after handing over charge, when he asked for signature, the petitioner told him not to worry, he would sign. Believing on him, Mr. Chandekar gave him charge of the Accounts and Cash Section. Considering his evidence, it is revealed that there is no written order of handing over charge of Accounts and Cash Section to the petitioner from Mr. Chandekar.

09] Be that as it may, the fact remains that the petitioner has worked as In-charge of Accounts and Cash Section from 30/09/1994 till he was suspended. For this entire period, he handled all cash transactions pertaining to the cash transactions. It is not the case of the petitioner that he did not work as an In-charge of Accounts and Cash Section with respondent No.3 for above said period. Just because, there is no written document of giving and handing over of charge between Mr. Chandekar and the petitioner, the other

evidence, which is in ample quantity, cannot be ignored. Therefore, the case in hand is not a case of no evidence. So far as the ground of not following the principles of natural justice is concerned, the record shows that the petitioner has participated in the departmental enquiry actively, rather he has cross-examined most of the witnesses. Therefore, the ground of not following the principles of natural justice has no merit. No fault is seen in the order dated 22/09/2009 of the MAT.

10] In view of the above, the impugned order does not require any interference under Article 226 of the Constitution of India. Hence, the writ petition fails. Rule is discharged with no order as to costs.

(M.W. CHANDWANI, J.)

(ROHIT B. DEO, J.)

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