

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6574 OF 2008

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| 1. The Commissioner, |] | |
| Food and Drugs Administration, |] | |
| Maharashtra State |] | |
| 2. The State of Maharashtra |] | .. Petitioners |

Versus

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| Janaradhan Ramchandra Chowdhari, |] | |
| R/o. Rabodi, Shivaji Nagar, Thane |] | .. Respondent |

Mr. N.K. Rajpurohit, AGP for the Petitioners.

Mr. Ram Apte, Sr. Advocate, with Mr. Mayuresh S. Lagu and Mr. Sagar Patil, Advocate for the Respondent.

CORAM : A.S. CHANDURKAR & JITENDRA JAIN, JJ

The date on which arguments were heard : 21ST MARCH, 2024.

The date on which Judgment is pronounced : 26TH APRIL, 2024.

JUDGMENT : [Per A.S. Chandurkar, J.]

1. The challenge raised in this writ petition is to the judgment dated 11th March 2008 passed by the learned Members, Maharashtra Administrative Tribunal in Transfer Application No.512 of 1991. By the said judgment, the Original Application preferred by the respondent was allowed and the petitioners were directed to reinstate the respondent in service and pay him 50% back-wages from the date of dismissal till his reinstatement.

2. Facts relevant for considering the challenge as raised are that the respondent was appointed on the post of Driver with the Food and Drugs Administration Department of the State Government on 1st July 1980. During the course of service, he was issued a notice on 7th April 1988 under Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (*for short "Rules of 1979"*). The respondent filed his reply on 15th April 1988, after which a disciplinary enquiry was held against him. On 19th May 1989, the Enquiry Officer submitted the enquiry report and held Charge Nos.1 and 3 to be proved. The Enquiry Officer proposed transfer of the respondent and also issuance of a warning to him. The Disciplinary Authority however did not accept the recommendations made by the Enquiry Officer and by the order dated 29th July 1989 directed his dismissal from service. The respondent filed an appeal before the Appellate Authority and by the order dated 18th December 1989, the Appellate Authority affirmed the order of dismissal from service.

3. The respondent being aggrieved by the aforesaid order filed Writ Petition No.3241 of 1990 challenging the order of dismissal. The proceedings were thereafter transferred to the Maharashtra Administrative Tribunal and on 27th April 1998, the said Transfer Application was decided holding that the report of the Enquiry Officer was based on some evidence available on record. It found no reason to interfere with the same. The

Tribunal further held that the punishment of dismissal as imposed was not disproportionate. Being aggrieved, the petitioner approached this Court by filing Writ Petition No.3470 of 1999. By the order dated 13th September 2006, this Court remanded the proceedings to the Tribunal on the ground that the Tribunal had failed to consider the evidence available on record while affirming the findings recorded by the Enquiry Officer. On that count, the order passed by the Tribunal was set aside and the proceedings were directed to be decided afresh. On remand, the Tribunal re-considered the matter and by its judgment dated 11th March 2008 found that the evidence that was led by the respondent in the departmental enquiry had not been considered by the Enquiry Officer. Though a ground to that effect was raised before the Appellate Authority, it too failed to consider the same. The learned Members held that the proceedings were vitiated for failure to consider the evidence led by the respondent in defence. The conclusions recorded by the Enquiry Officer were thus based on surmises. It was further held that the Appellate Authority did not consider the appeal in accordance with Rule 23 of the Rules of 1979. On these grounds, the order of dismissal was set aside and it was directed that the respondent be reinstated in service with 50% back-wages. Being aggrieved by the aforesaid judgment, the Food and Drugs Administration Department has preferred this writ petition.

4. Mr. N.K. Rajpurohit, learned Assistant Government Pleader submitted that the Tribunal was not justified in setting aside the order of dismissal especially when the Disciplinary Authority had considered the entire material on record and found that Charge Nos.1 and 3 had been duly proved before the Enquiry Officer. Only on the ground that the evidence of the defence witness was not considered, the Tribunal was not justified in interfering with the order of punishment. It ought to have been kept in mind that the respondent did not complain of violation of any principles of natural justice nor did he challenge the competence of the petitioners in conducting the enquiry. After giving full opportunity to the respondent, the Enquiry Officer held the two charges to be duly proved. Assuming that the evidence of the defence witness deserved consideration, the Tribunal ought to have remanded the proceedings to the Disciplinary Authority for re-consideration.

Referring to the judgment of the Supreme Court in *State Bank of India and Anr. Vs. K.S. Vishwanath, (2022) 15 SCC 190*, it was submitted that the Tribunal was not justified in re-appreciating the entire material to thereafter hold that the charges against the respondent were not proved. Reference was also made to the judgment of the Division Bench in *Anand Kumar Pahal Vs. The State of Maharashtra and Anr. (OOCJ Writ Petition No.2007 of 2022, along with connected matter, decided on 4th July 2023)*.

Hence, it was urged that considering the material on record, the Tribunal was not justified in interfering with the order passed by the Disciplinary Authority and hence the impugned judgment was liable to be set aside.

5. Per contra, Mr. Ram Apte, learned Senior Advocate for the respondent supported the judgment of the Tribunal. According to him, the Tribunal was fully justified in interfering with the order passed by the Disciplinary Authority on the ground that the evidence led by the respondent was not considered by the Enquiry Officer. This ground was specifically raised in the appeal preferred by the respondent but the same was not considered by the Appellate Authority. On perusal of the evidence led by the respondent, it was clear that the charges framed could not be said to be duly proved. Referring to the earlier order of remand passed in Writ Petition No.3470 of 1999, it was submitted that this Court had observed that it was necessary for the Tribunal to consider the evidence that was recorded while upholding the findings recorded by the Enquiry Officer. In view of this direction, the material was examined with a clarification that the same was being done on the premise that the evidence led by the respondent had not been considered by the Enquiry Officer. It was then submitted that the order of reinstatement as passed by the Tribunal on 11th March 2008 was implemented by the petitioners, which fact had been recorded in the order dated 16th October 2008 passed

by this Court. Since the petitioners had voluntarily complied with the said direction, coupled with the fact that the respondent had during pendency of the writ petition duly retired and was now aged about 72 years, this Court may not exercise discretion in entertaining the challenge. Since it was the case of failure to consider all the evidence recorded, the Tribunal was justified in interfering in the matter. To support his contention, the learned Senior Advocate placed reliance on the decisions in *Yoginath D. Bagde Vs. State of Maharashtra and Anr.*, (1999) 7 SCC 739 and *Moni Shankar Vs. Union of India and Anr.*, (2008) 3 SCC 484. It was thus submitted that there was no merit in the challenge and the writ petition was liable to be dismissed.

6. We have heard the learned counsel for the parties and with their assistance, we have perused the documents on record. It is not in dispute that during the course of the disciplinary enquiry, the petitioners examined various witnesses for bringing home the charges framed against the respondent. The respondent also examined a witness in support of his defence. The Tribunal has found that the Enquiry Officer merely on the basis of the evidence led by the petitioners held that Charge Nos.1 and 3 had been duly proved. The Enquiry Officer failed to take into consideration the evidence led by the respondent in defence. It has further found that the respondent while challenging the order passed by the

Disciplinary Authority raised a specific ground to this effect in his Memorandum of Appeal. However, the Appellate authority while deciding the appeal under Rule 23 of the Rules of 1979 failed to consider that ground and proceeded to confirm the order passed by the Disciplinary Authority. This factual aspect is evident from the record and the same is not disputed by the petitioners.

7. After considering the evidence led by the respondent, the Tribunal has held that the Enquiry Officer had arrived at his conclusion merely on the basis of surmises. If the evidence led by the respondent would have been considered, then the findings recorded by the Enquiry Officer were such that no sensible person could have arrived at that conclusion after weighing the pros and cons. The conclusion of the Enquiry Officer was thus held to be perverse. We find that it was necessary for the Enquiry Officer to have considered the entire evidence led by both parties and thereafter to have arrived at its conclusion. By failing to consider the evidence led by the respondent, the findings recorded by the Enquiry Officer stand vitiated.

The respondent did raise a grievance that the evidence led by him was not considered by the Appellate Authority though it was duty-bound to do so under Rule 23 of the Rules of 1979. However, the Appellate Authority also has failed to go into this aspect. We therefore find that the

Tribunal has taken into consideration all relevant aspects and has thereafter taken a possible view of the matter. This Court would not be justified in going into the aspect of sufficiency of evidence led by the parties before the Enquiry Officer. When it is seen that the material evidence led in defence has not been considered at all, the conclusion of the Enquiry Officer would definitely be vitiated. It is not a case of re-appreciation of evidence by the Tribunal as urged. The Tribunal had proceeded to consider the effect of failure to consider the evidence led in defence by the Enquiry Officer.

8. The learned Assistant Government Pleader submitted that in such a situation, the Tribunal ought to have remanded the proceedings to the Enquiry Officer to re-consider his findings. The Tribunal noted in paragraph 29 of its judgment that the proceedings had already been remanded once for fresh consideration. A further direction to remand the proceedings to the Enquiry Officer was found to be uncalled for in the facts of the case. We further find that after the Tribunal granted the relief of reinstatement in favour of the respondent, the said order was complied with even prior to filing of the writ petition. During pendency of the writ petition, the respondent has retired and is now aged about 72 years. In these facts therefore, we are not inclined to remand the proceedings again to the Enquiry Officer to re-consider his findings. In this backdrop

therefore, the ratio of the decisions relied upon by the learned Assistant Government Pleader do not support the case of the petitioners.

9. In absence of any jurisdictional error and the Tribunal having taken a possible view of the matter considering the fact that the evidence led by the respondent in defence was not considered at all by the Enquiry Officer, we are not inclined to interfere in exercise of writ jurisdiction. Hence, for aforesaid reasons, the writ petition stands dismissed. The amount of back-wages be paid to the respondent in terms of the order passed by the Tribunal within a period of eight weeks from today.

10. Rule stands discharged with no order as to costs.

[JITENDRA JAIN, J.]

[A.S. CHANDURKAR, J.]