



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

WRIT PETITION NO. 3091/2024

(PRITAM GAUTAM JAMBHULKAR **VERSUS** THE APPELLATE AUTHORITY, HIGH COURT OF JUDICATURE OF BOMBAY, BENCH AT NAGPUR THROUGH ITS REGISTRAR & ANOTHER)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri Nahush S. Khubalkar, counsel for the petitioner.
Shri Amit M. Kukday, counsel for the respondents.

CORAM : NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.

DATE : JULY 18, 2024

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The petitioner, an employee of the respondent no.2, has approached this Court with following prayers :-

“(i) Quash and set aside paragraph number 10 and 11 of the judgment and order dated 5 March 2024 [Annexure No.P-17, Page No.198 to 203] delivered by the respondent number 1.

(ii) Quash and set aside the charge sheet dated 15 April 2024 [Annexure No.P-22, Page No.211 to 218] issued to the petitioner by respondent number 2, and the consequent disciplinary proceedings.

(iii) Direct respondent number 2 to refix the pay of the petitioner in the pay scale of ₹ 23,100/- as on 1 April 2024 by modifying the order of fixation of pay dated 4 April 2024 [Annexure No.P-19, Page No.205], and to pay the arrears of difference of pay scale between ₹ 19,900/- (wrongly fixed as per Annexure No.P-19 Page No.205) and ₹ 23,100/- (entitlement of the Petitioner) from the date of reinstatement, with interest.

(iv) Direct respondent number 2 to pay arrears of back wages to the petitioner from 26 November 2021 (the date of dismissal from service) to 19 March 2024 (the date of reinstatement in service), with interest.

(v) By way of interim relief, grant stay to the charge sheet dated 15 April, 2024 [Annexure No.P-22, Page No.211 to 218], and the disciplinary enquiry proceedings before the Respondent No.2 Principal District & Sessions Judge, Bhandara, during the pendency of this petition.

(vi) Pass any other which this honourable court deems fit in the circumstances of the case and in the interest of justice, equity and good conscience.”

2. The brief facts which are necessary for deciding the present writ petition are as under :-

After clearing the selection process on December 01, 2018 the petitioner was selected and appointed to the post of Junior Clerk by the respondent no.2. The petitioner while discharging his duties on the post of Junior Clerk was attached to the Court of Civil Judge (Junior Division) and Judicial Magistrate First Class, Sakoli wherefrom complaints were received by the respondent no.2 about the serious misconduct at the behest of the petitioner. Accordingly, the respondent no.2 directed a preliminary enquiry in the matter *vide* order dated January 09, 2020. In the said preliminary enquiry, since substance was noticed in the complaints against the petitioner, the respondent no.2 had directed a departmental enquiry. Accordingly, the petitioner came to be charge-sheeted on February 18, 2021.

3. The petitioner after submitting his statement of defence and after concluding the departmental proceedings, the Enquiry Officer, viz. Civil Judge (Senior Division), Bhandara submitted his report dated June 25, 2021. Based on above report, a show cause notice was issued to the petitioner on July 07, 2021 as to why the report of the Enquiry Officer should not be accepted and penalty as proposed should not be imposed.

4. The petitioner resisted the said show cause notice *vide* his reply dated July 16, 2021 based on which he was heard on October 04, 2021. After hearing the petitioner, the respondent no.2 noticed that the petitioner was guilty of the charges levelled against him. Petitioner was served with the termination order dated November 26, 2021. Feeling aggrieved, the petitioner preferred Administrative Appeal No.13 of 2021 before the Hon'ble Guardian Judge. The appeal of the petitioner was heard and partly allowed on March 05, 2024. The observations of the appellate authority in the impugned order dated March 05, 2024 read thus :-

“9. The appellant was working as Junior Clerk. He joined service on or about 1-12-2018. Some lawyers have lodged complaint against him on 20-12-2019 making allegation of corruption and improper treatment to lawyers/advocates. The appellant was under probation. The Principal District Judge, Bhandara must be conscious of the fact that if the work of probationer is not satisfactory, he could be discharged in terms of Rule 5(viii) of the Rules of 1979. Despite such fact, he thought it proper to conduct disciplinary enquiry. As such, the discretion was with the Principal District Judge, Bhandara. However, if he choose to conduct enquiry, it ought to be conducted strictly in accordance with the rules. Having not done so, the findings rendered by the Principal District Judge, Bhandara is unsustainable. The order dated 26-11-2021 is accordingly quashed and set aside.

10. The matter is remanded back to the Principal District Judge, Bhandara to consider it afresh and/or with a liberty to formulate the articles of charge strictly in accordance with sub-rule (3) of Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 and to complete the enquiry as expeditiously as possible.”

5. Consequent to the administrative appeal of the petitioner being allowed, he was reinstated on March 19, 2024. In view of the order passed in the administrative appeal on March 05, 2024, a fresh charge-sheet was served on the petitioner on April 15, 2024.

In this factual background, the petitioner has questioned the order dated March 05, 2024 passed in Administrative Appeal No.13 of 2021 whereby the matter was remanded back to the respondent no.2 to consider it afresh with liberty to formulate the article of charge strictly in accordance with sub-rule (3) of Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. The petitioner has also questioned the consequential charge-sheet dated April 15, 2024 issued to him, consequential disciplinary proceedings, fixation of pay in the Scale of ₹ 23,100/- as on April 01, 2024 and payment of arrears of salary.

6. Shri Nahush Khubalkar, learned counsel for the petitioner would urge that the impugned order dated March 05, 2024 passed by the Appellate Authority is illegal as the power of remand cannot be exercised for filling in or curing the lacunae, viz. in this case, the permission to frame proper charge. So as to substantiate his contentions, he would draw support from the scheme of Order XLI Rule 23-A of the Code of Civil Procedure so as to claim that the Appellate Authority ought to have recorded sufficient reasons in support of the order of remand thereby recording satisfaction as to the necessity of remand. He would invite attention to the Single Bench judgment of this Court in *Vishnu Dashrath Chavan Versus Pundalik Dashrath Chavan* [2017(5) Mh.L.J. 163]. According to him, the Appellate Authority ought to have applied circumspect approach in

ordering remand as the unwarranted order of remand results in prolonging the litigation which ultimately results in manifest injustice to the litigant. According to the learned counsel, as a consequence of order of remand, the petitioner would suffer injustice as he is required to face unwarranted second enquiry because of the serious lapses and mistake committed by the Disciplinary Authority. By inviting attention of this Court to the observations in paragraph 10 of the impugned order, it is urged that the Disciplinary Authority should have applied its mind before issuing a fresh charge-sheet against the petitioner. According to the learned counsel, the contention of the petitioner as to the sufficiency of material for issuance of a second charge-sheet is not gone into by the Disciplinary Authority as there is non-application of mind. He would claim that both the charge-sheets are verbatim same and that being so, based on the same material, addition of two new charges could not be permitted which was not part of the complaint of lawyers. As such, he would urge that the Disciplinary Authority has exceeded the scope provided by the order of remand. He would also urge that there is failure on the part of the respondents in fixing the pay and payment of arrears to the petitioner. The learned counsel has prayed for grant of the reliefs sought in the writ petition.

7. As against above, Shri Amit Kukday, learned counsel for the respondents would strenuously oppose the prayers made in the writ petition. According to him, the Appellate Authority while exercising the powers was conscious of the fact about the remedy of remand. He would claim that while ordering remand, the Appellate Authority was well within its jurisdiction as the petitioner has

failed to demonstrate any embargo on such power to be exercised by the Appellate Authority so as to order remand in the matter. The counsel for the respondents would urge that perusal of both the charge-sheets which are relied on by the petitioner would reveal that the petitioner had admitted that the material is same but there is only addition of new charges. He would claim that the charge can be added/alterd which is within the ambit and powers of the Disciplinary Authority as the order of remand does not restrict the powers of the Disciplinary Authority to that effect. Drawing support from the observations made in paragraph 10 of the impugned order, the counsel for the respondents would urge that the charge-sheet issued subsequent to the order of remand is in tune with law. According to him, the claim put forth by the petitioner that the order of the Appellate Authority is contrary to Order XLI Rule 23-A of the Code of Civil Procedure or the principle enumerated therein, is without any basis. He would urge that the impugned order contains reasons for remand and as such it cannot be claimed that the order of remand is unjust and uncalled for. According to the learned counsel for the respondents, the issuance of second charge-sheet with modified charge could not be said to be passed in violation of principles of natural justice since the petitioner has got another opportunity to defend himself. He would claim that the Disciplinary Authority has rightly applied its mind and thought it fit to re-frame the charges. In this background, it is claimed that the writ petition is liable to be dismissed. He would claim that in case if the writ petition is allowed, the issue of payment of arrears of salary and re-fixation can be reconsidered.

8. We have appreciated the aforesaid submissions.

9. We are required to be confined to the order of the Appellate Authority which is impugned in the present writ petition, viz. the order dated March 05, 2024 wherein the Appellate Authority accepted the contentions of the petitioner that while imposing major penalty, the procedure contemplated under sub-Rule 3 of Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 was not adhered to. The Appellate Authority had not gone into the details of the evidence but has noticed that the Principal District and Sessions Judge, Bhandara, the respondent no.2 herein, has rightly exercised the discretion of proceeding departmentally against the petitioner and directed enquiry to be conducted strictly in accordance with the Rules. Before going into the merits of the matter, we are required to look into the position of law as well as the statutory provisions which the petitioner has taken recourse to so as to substantiate his contentions.

10. The learned Single Judge in *Vishnu Dashrath Chavan* (supra) while dealing with the provisions of Order XLI Rules 23, 23-A and 25 of the Code of Civil Procedure has observed thus :-

“14. It is well settled that the Appellate Court should be circumspect in ordering a remand as it is well known that unwarranted order of remand results in a prolonged litigation and consequent manifest injustice to the litigants. In this regard, it would be advantageous to refer to the decision of the Apex Court in Municipal Corporation, Hyderabad Versus Sundersingh, 2008 Mh.L.J. OnLine (S.C.) 13=(2008) 8 SCC 485, wherein it is held that :

11. It is now well settled that before invoking the said provision, the conditions precedent laid down therein must be satisfied. It is further well settled that the Court should loathe to exercise its power in terms of Order XLI Rule 23 of the Code of Civil Procedure and an order of remand should not be passed routinely. It is not to be exercised by the Appellate Court only because it finds it difficult to deal with the entire matter. If it does not agree with the decision of the trial Court, it has to come with a proper finding of its own. The Appellate Court cannot shirk its duties.”

11. The fact remains that the provisions of the Code of Civil Procedure cannot be in strict sense made applicable to the disciplinary proceedings. Though the said provisions are not applicable, the learned counsel for the petitioner has claimed that the principles akin thereto can be said to be applied. If we consider the aforesaid submissions in the light of the observations in *M.V. Bijlani Versus Union of India & Others [(2006) 5 SCC 88]*, it is clear that the disciplinary proceedings are quasi-criminal in nature and the charges are required to be proved based on some evidence but not of degree of evidence in a criminal trial. The Enquiry Officer while performing the quasi-judicial function in the matters of quasi-judicial enquiry is required to analyze the documents to arrive at a conclusion and the principle of preponderance of probability to prove the charge on the basis of material placed on record is required to be adhered to. The Apex Court further held that the Enquiry Officer cannot refuse to consider the relevant facts and shift the burden of proof without any legal basis. The enquiry officer cannot enquire into the allegations with which the delinquent has not been charged with. We can draw support from the observations in paragraphs 23 and 25 of the said judgment which read as under :-

“23. Evidently, the evidences recorded by the enquiry officer and inferences drawn by him were not commensurate with the charges. If it was a case of misutilisation or misappropriation, the appellant should have been told thereabout specifically. Such a serious charge could not have been enquired without framing appropriate charges. The charges are otherwise vague. We have noticed hereinbefore that the High Court also proceeded on the basis that then on-maintenance of diary amounted to misutilisation of copper wire.

25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.”

12. Apart from above, the Division Bench of this Court at Bombay in *Sidram Yelappa Jadhav Versus Narsinggirji Mills & Others* [1987(2) CLR 273] has observed that once it is noticed that the domestic enquiry was vitiated because of vagueness of charge, in such an eventuality two courses are available for the Courts; one to quash the enquiry and to set aside the order of dismissal with liberty to the employer to hold a fresh enquiry; or secondly, to permit the management to submit a proper charge-sheet before it and take the evidence itself on such properly.

In the aforesaid background, if we analyze the impugned order passed by the Appellate Authority, it has proceeded to consider the nature of two charges framed against the petitioner. The Appellate Authority then examined the said charges on the touchstone of sub-Rule 3 of Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 and noted that the article of charge is neither definite nor distinct. The Appellate Authority noted that there is vagueness in the charges as the same are non-specific and as such directed the remand of the matter. If we consider the order impugned in the light of aforesaid observations, it is not brought to our notice that the same is not based on the statutory provision or that the Appellate Authority sans power to order remand of the matter if it is satisfied that the charges are vague and non-specific. The view of the Appellate Authority can be said to be in tune with the judgment of the Division Bench of this Court in *Sidram Yelappa Jadhav* (supra).

13. We have considered the charges which are framed against the petitioner in the charge-sheet issued to him after the order of remand passed by the Appellate Authority and it can be noticed therefrom that there is no change in the foundation but only charges are made more specific. The intention of the Appellate Authority appears to be to give effective opportunity of hearing to the petitioner to meet the specific and clear charges as he would be in a position to answer the same with more clarity and understanding. Such opportunity offered to the petitioner pursuant to the order of remand can be said to be in compliance with the principles of natural justice as even the framing of non-

specific and unclear charge can be said to be amounting to denial of an opportunity as guaranteed under Article 14 of the Constitution of India. The net result would be the petitioner would be put to prejudice for making him answer to a vague and non-specific charge which might have an effect of enhancing the unlimited scope of the charge. Rather the order of remand and the specific charges being framed, in our opinion, appears to be in the interest of the petitioner.

14. The Apex Court in paragraph 8 of the judgment in *Allahabad Bank & Others Versus Krishna Narayan Tewari* [(2017) 2 SCC 308] has observed thus:-

“8. There is no quarrel with the proposition that in cases where the High Court finds the enquiry to be deficient, either procedurally or otherwise, the proper course always is to remand the matter back to the authority concerned to redo the same afresh. That course could have been followed even in the present case. The matter could be remanded back to the disciplinary authority or to the enquiry officer for a proper enquiry and a fresh report and order. But that course may not have been the only course open in a given situation. There may be situations where because of a long time-lag or such other supervening circumstances the writ court considers it unfair, harsh or otherwise unnecessary to direct a fresh enquiry or fresh order by the competent authority. That is precisely what the High Court has done in the case at hand.”

As such, the view expressed by the Appellate Authority in remanding the matter is in tune with the position of law as reflected in the aforesaid judgment of the Apex Court which is not only binding on this Court but also on the Appellate Authority.

15. In paragraphs 5 and 6 of the judgment in *Surath Chandra Chakrabarty Versus State of West Bengal* [1970 (3) SCC 548], the Apex Court has observed thus :-

“5. It is incomprehensible how the details as to date, time, place and person etc. would not have made the charges more definite as appears to have been the opinion of the Division Bench. We are unable to agree that the details without which a delinquent servant cannot properly defend himself are a matter of evidence. In this connection reference may be made to Fundamental Rule 55 which provides, *inter alia*, that without prejudice to the provisions of the Public Servants Enquiry Act, 1850, no order of dismissal, removal or reduction shall be passed on a member of service unless he is informed in writing of the grounds on which it is proposed to take action and has been afforded an adequate opportunity of defending himself. The grounds on which it is proposed to take action have to be reduced to the form of a definite charge or charged which have to be communicated to the person charged together with a statement of the allegations on which each charge is based and any other circumstance which it is proposed to be taken into consideration in passing orders has also to be stated. This rule embodies a principle which is one of the basic contents of a reasonable or adequate opportunity for defending oneself. If a person is not told clearly and definitely what the allegations are on which the charges preferred against him are founded he cannot possibly, by projecting his own imagination, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him.

6. The whole object of furnishing the statement of allegations is to give all the necessary particulars and details which would satisfy the requirement of giving a reasonable opportunity to put up defence. We have no manner of doubt that the appellant was denied a proper and reasonable opportunity of defending himself by reason of the charges being altogether vague and indefinite and the statement of allegations containing the material facts and particulars not having been supplied to him.”

16. The Apex Court has in categorical terms observed that there has to be clarity in the charge framed against the delinquent so that he could understand clearly and definitely all the allegations on which the charges preferred against him are founded. The object of furnishing the statement of allegation is to give all the necessary particulars and details. As such, the necessity for re-framing of charge can be spelt out from the aforesaid judgment.

17. In this background, it cannot be said that the Appellate Authority has given an opportunity to the respondent no.2 to fill in the lacunae or the shortfalls in the charge-sheet. Rather the intention of the Appellate Authority appears to be in the interest of the petitioner so as to make him answer a specific and clear charge. We are also required to be sensitive to the principle that power to entertain an appeal includes power to allow, dismiss or remand. The order of remand passed by the Appellate Authority is based on the specific reasons recorded therein and cannot be said to be suffering from non-consideration of the material or any statutory provision of law. Apart from above, the Disciplinary Authority while issuing the fresh charge-sheet appears to have applied its mind so as to make the charge more specific and clear. As such, the grounds which are raised by the petitioner cannot be accepted so as to interfere with the order of remand impugned herein and the consequential issuance of charge-sheet. It cannot be said that the order impugned suffers from illegality or amounts to making the petitioner suffer hardship.

18. In the aforesaid backdrop, we are of the view that no case for causing interference is made out. The petition as such stands dismissed. No costs.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

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