



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

Writ Petition No. 8335 of 2019

[ab Kundlik More ..vs.. The Divisional Commissioner, Amravati, Division Amravati and anr.]

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

Court's or Judge's orders

Mr. S. M. Vaishnav, Advocate for the petitioner
Mr. A. A. Madiwale, AGP for respondent no. 1
None for respondent no. 2

CORAM : ANIL L. PANSARE J.

DATED : 5-12-2024

Heard.

2. The petitioner is aggrieved by order dated 9-9-2019 passed by the Divisional Commissioner, Amravati, who has upheld the order dated 1-4-2019 passed by the Chief Executive Officer (CEO), Zilla Parishad, Buldhana. The CEO, by the aforesaid order, has reduced the pay scale of the petitioner to its original pay band/scale and further the period of suspension was treated as suspension.

3. The petitioner, who was, at the relevant time, working as Village Development Officer, has faced three charges which relates to economical irregularities while discharging his duties. The charge-sheet was served upon the petitioner and along with charge-sheet were served list of witnesses as also the report of Joint Enquiry Committee with statement of Secretary.

4. Learned counsel for the petitioner submits that none of the witnesses have produced any document including report of Joint Enquiry Committee before the

Enquiry Officer and none of these documents were proved and marked exhibit in the enquiry. The witnesses in their chief examination have stated that they are in agreement with the charges leveled in the charge-sheet. One witness, namely, Dhanjay Saoji had given some details of the alleged economical irregularities, however, he has also not produced or proved any document.

5. Learned counsel for the petitioner has then invited my attention to the final enquiry report dated 31-1-2019. The Enquiry Officer has placed heavy reliance upon the report of Joint Enquiry Committee to render a finding of guilt against the petitioner. Learned counsel submits that such reliance on the report which has been not proved is not permissible.

6. In support, he has relied upon the judgment of Hon'ble Supreme Court in the case of ***Roop Singh Negi Vs. Punjab National Bank and others [(2009) 2 SCC 570]*** wherein on the requirement of proof of document, the Supreme Court held thus :

“14. Indisputably, a departmental proceeding is a quasi judicial proceeding. The enquiry officer performs a quasi judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof.

Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.”

As could be seen, in the case before the Supreme Court, the management witnesses had merely tendered documents but the contents were not proved and thus could not have been treated as evidence. In the present case, even the documents were not tendered, though the copy of report of Joint Enquiry Committee was supplied to the petitioner. The fact, however, remains that the said report was not proved by the witnesses.

7. Learned counsel for the petitioner has placed reliance upon yet another judgment of Hon'ble Supreme Court in the case of ***Nirmala J. Jhala Vs. State of Gujarat and another [(2013) 4 SCC 301]*** in support of his contention that if the documents are not proved, the Enquiry Officer and for that purpose, the disciplinary authority cannot rely upon the same. The Supreme Court on this point has observed as under.

“45. In view of above, it is evident that the evidence recorded in preliminary inquiry cannot be used in regular inquiry as the delinquent is not associated with it, and opportunity to cross-examine the persons examined in such inquiry is not given. Using such evidence would be violative of the principles of natural justice.

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51. There is nothing on record to show that either the preliminary enquiry report or the statements recorded therein, particularly, by the complainant-accused or Shri C.B. Gajjar, Advocate, had been exhibited in regular inquiry. In absence of information in the chargesheet that such

report/statements would be relied upon against the appellant, it was not permissible for the enquiry officer or the High Court to rely upon the same. Natural justice is an inbuilt and inseparable ingredient of fairness and reasonableness. Strict adherence to the principle is required, whenever civil consequences follow up, as a result of the order passed. Natural justice is a universal justice. In certain factual circumstances even non-observance of the rule will itself result in prejudice. Thus, this principle is of supreme importance. (Vide S. L. Kapoor v. Jagmohan, D. K. Yadav v. JMA Industries Ltd. and Mohd. Yunus Khan v. State of U.P.).”

Thus, the Supreme Court held that the preliminary enquiry report cannot be used in regular enquiry because the delinquent is not associated with it and the opportunity to cross-examine the persons examined in such enquiry is not given. The Supreme Court held that using such evidence could be violative of principles of natural justice. Same is the case here. The Joint Enquiry Committee Report, though was served on petitioner, its contents were not proved before the Enquiry Officer and in that sense, the petitioner had no opportunity to cross-examine the persons examined in the said enquiry and also to challenge the report.

8. Put altogether, for want of proof of the Joint Enquiry Committee Report as also the documents relied upon by the Enquiry Officer, the inference of proof of charges against the petitioner could not have been drawn by the Enquiry officer. This amounts to committing apparent error of law.

9. None appears for the respondent no. 2 and, therefore, the submissions made by the petitioner's counsel remained unchallenged.

10. Learned Assistant Government Pleader though made an attempt to justify the order, he failed to show that the contents of Joint Enquiry Committee Report were proved by any witness or the documents placed before the Enquiry Officer were proved.

11. The orders impugned are, therefore, unsustainable. Writ petition is allowed. Order dated 9-9-2019 passed by respondent no. 1 in proceeding no. 100/establishment/Z.P./Buldhana/2019 and the order passed respondent no. 2 dated 1-4-2019 are quashed and set aside.

12. Writ petition is disposed of in above terms.

(Anil L. Pansare, J.)