



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11362 OF 2015

Nagappa Shankar Powale

..PETITIONER

VERSUS

Union of India and Others

..RESPONDENTS

....

Mrs. M.R. Jamdhade, Advocate for petitioner

Mr. A.G. Talhar, D.S.GI., a/w Mr. Darshan Sahuji, Mr. Anand Bangar and
Mr. Yadnyesh Dharmadhikari, Advocates for respondents

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CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.

DATE : 01st AUGUST, 2025

PER COURT :

. The challenge in this writ petition is to the order dated 12th June, 2015 passed by the Central Administrative Tribunal, Mumbai ('CAT') dismissing the petitioner's Original Application No. 401 of 2012 preferred against the order of his dismissal from service on account of misappropriation / defalcation of the public funds.

2. Heard learned counsel for both the sides. The petitioner was appointed as Branch Post Master way back in 1993. After having completed little over ten years of service, it was found that he had indulged in misappropriation of the amount received from the customers towards deposit of electricity bills, etc. He was, therefore, suspended and subjected to

departmental enquiry. In the departmental enquiry, four out of five charges against him were held to have been proved. The petitioner was unsuccessful in the appeal and even in the revision against the order passed in appeal. He, thereafter preferred original application before the CAT. The same too was dismissed.

3. Learned counsel for the petitioner would submit that in the departmental enquiry against the petitioner, principles of natural justice have not been followed. She would further submit that the original documents were destroyed. Those were not available even during enquiry and before the appellate forum. She further pointed out that when the petitioner had preferred appeal in January 2007, the appellate authority observed in its order the petitioner to have been given personal hearing on 31st August, 2007. She further submitted that the petitioner has been acquitted from the charge in the criminal trial and when the enquiry was proceeded based on the same material, the decision of acquittal would have very much relevance and the petitioner ought to have been exonerated of the departmental enquiry. Learned counsel has relied on the Apex Court judgment in case of ***State of U.P. Vs. Shatrughan Lal and Anr., AIR 1998 SC 3038***, wherein it has been observed that the appellant therein was not provided with the copies of documents relevant to the departmental enquiry and thus the enquiry vitiates on account of non-observance of principle of natural justice.

4. Learned counsel for the petitioner contended that the enquiry officer had personal bias against him. The complainant - Bansode was also inimical against the petitioner. The petitioner had, therefore, made a complaint to the authorities concerned. She further contended that Bansode obtained signatures of the witnesses on the blank papers. It is also his contention that the documents relevant in the enquiry proceeding were all forged, so as to teach the petitioner a lesson. She would further submit that the figures of money alleged to have been misappropriated, differs. She further relied on the the judgment of the Apex Court in case of ***Ram Lal Vs. State of Rajasthan and Ors., (2024) 1 SCC 175*** and ***G.M. Tank Vs. State of Gujarat and Anr., AIR 2006 SC 2129*** to ultimately urge for allowing the petition.

5. Learned D.S.G.I. would, on the other hand, submit that powers of this Court in exercise of writ jurisdiction against the decision in departmental enquiry is very limited. It is only in the case of non observance of principles of natural justice, this Court can interfere. Learned D.S.G.I. reiterated the reasons given by the CAT and other authorities concerned in support of the respective orders to ultimately urge for dismissal of this petition.

6. We have considered the submissions advanced. Perused the documents on record.

7. So far as acquittal of the petitioner in criminal proceeding is concerned, we have gone through the judgment acquitting the petitioner from the criminal charge of misappropriation of the public funds. The judgment indicates that six witnesses were examined in the matter before the criminal Court. Two of them were panch witnesses and other two were the employees of the department of Post. Thus, the judgment itself indicates that the witnesses, whose amount was alleged to have been misappropriated by the petitioner, were not examined in the criminal case, whereas the decision in the departmental enquiry was proceeded on the basis of the evidence of such witnesses. As such, it is not a case that both, the criminal case and the departmental enquiry, to have been based on the identical evidence of one and the same witnesses. The Apex Court in the case of G.M. Tank (supra) has observed thus :-

“Constitution of India, Art.311, Art.16 – Departmental enquiry and criminal proceedings – Based on identical and similar set of facts and evidence – Same witnesses examined in criminal case – Criminal Court ‘ honourably’ acquitted employee – Findings to contrary recorded in departmental proceedings, unfair and oppressive – Dismissal order liable to be set aside.”

The judgment referred to hereinabove indicates that it is only in the case of identical and similar set of facts and evidence. If there is acquittal in the criminal proceeding, the benefit thereof may be extended to the delinquent. At the cost of repetition it is observed that the facts in the present case are different from that of the case mentioned hereinabove.

8. It is true that charge no.2 was said to have been proved in spite of Mr. Gaikwad, whose money was said to have been misappropriated by the petitioner, passed away before his evidence was recorded. We have, however perused the order passed by the disciplinary authority to find the petitioner to have admitted in writing about the said charge. Based on the petitioner's admission, the said charge is held to have been proved. In the facts and circumstances of the case, even Mr. Gaikwad though was no more while enquiry was underway, the petitioner could not be benefited thereby.

9. So far as contention of the petitioner as regards enquiry officer to have been biased against him is concerned, no material of that sort was placed before any of the authorities, who had dealt with the matter. Mere alleging bias is not sufficient. This ground, therefore, also fails. Same is the case as regards Mr. Bansode, who is the complainant in the matter. It is only before the appellate authorities those allegations have been made. When the petitioner had, in fact, approached in the first round of enquiry proceeding to have personal inspection of the documents, the same ground could have been raised. We, therefore, find the same to have been made afterthought.

10. As already observed that in the matters relating to the departmental enquiry scope of interference in the writ jurisdiction is very limited and as the CAT has dealt with all the issues raised by the petitioner

before it, we do not find the findings recorded against the petitioner in the departmental enquiry either to have been perverse or arrived at without giving the petitioner a proper opportunity of hearing. On the contrary, the record indicates that the petitioner alongwith his learned counsel was present on number of dates before the enquiry officer. It is even not the case of the petitioner that he could not cross-examine any of the witnesses examined on behalf of the department. So far as the question of personal hearing is concerned, close reading of the documents on record indicates that it was typo-graphical mistake as to the date, crept in the order passed by the appellate authority.

11. Since no case for interference with the order impugned herein is warranted, we find the writ petition to be devoid of merit and the same is, therefore, dismissed.

(NEERAJ P. DHOTE, J.)

SSD

(R.G. AVACHAT, J.)