

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.13368 OF 2025**

Lalit Ramkrushna Bode)
R/a : B-4/204, Mont-Vert Pristine,)
Opp. Khadki Railway Station,)
Sr. No.2447 Jadhavwadi, Bopodi,)
Pune – 411 020)Petitioner

Versus

1. State of Maharashtra)
Through Urban Land and Development)
Department, having its office at Mantralaya)
Mumbai (To be served through Additional)
Government Pleader's Office, High Court,)
Bombay))
2. Pune Municipal Corporation)
Shivajinagar, Pune – 411 005)
(Through its Municipal Commissioner)
Shri Rajendra B. Bhosale))
3. Additional Municipal Commissioner)
(General), Pune Municipal Corporation,)
Shivajinagar, Pune – 411 005)
4. Adv. Ashok Kashinath Khamkar)
Enquiry Officer,)
Pune Municipal Corporation, Pune)Respondents

Mr. Nitin Kulkarni (through video conferencing) a/w. Mr. Avinash Belage for the Petitioner.

Ms. Priyanka Chavan, AGP for Respondent No.1.

Mr. Vishwanath Patil a/w. Mr. Akshay Naidu for Respondent Nos.2 and 3.

**CORAM : RAVINDRA V. GHUGE
&
ASHWIN D. BHOBE, JJ.**

DATE : 16th OCTOBER, 2025

ORAL JUDGMENT : (PER : RAVINDRA V. GHUGE, J.)

1. Leave to delete Respondent No.4, being an Enquiry Officer. Deletion be carried out forthwith.

2. Rule. Rule made returnable forthwith. Heard the Petition finally with the consent of the learned Advocates appearing for the parties.

3. The case before us falls in a narrow compass. The Petitioner contends as follows :

(a) The Petitioner was suspended by the Corporation vide order dated 9th May, 2024 pending disciplinary action;

(b) He was issued with a chargesheet on 5th September, 2024;

(c) An Enquiry Officer was appointed on 27th November, 2024;

(d) The Departmental Enquiry commenced on 10th December, 2024 and concluded on 11th February, 2025;

(e) The Petitioner submitted his defence statement on 11th February, 2025;

(f) On 11th February, 2025 (the same day), the Enquiry Officer tendered his report (15 pages), which is placed on record. The Petitioner was exonerated of all the charges and was declared innocent;

(g) On 14th May, 2025, the Petitioner was informed that a new Enquiry Officer has been appointed, despite the Petitioner having been exonerated of the charges leveled against him, with the conclusion that none of the allegations were proved.

4. The Corporation has vehemently defended its action of appointing a new Enquiry Officer and initiating a fresh enquiry. Reliance is placed on clause 7.3 under Chapter VII of the Divisional Enquiry Manual, which reads as under :

"७.३. नव्याने चौकशी. - (१) जर शिस्तभंगविषयक प्राधिकरण, ही चौकशी स्वाभाविक न्यायतत्वांशी सुसंगत अशा प्रकारे झालेली नाही अशा निर्णयाप्रत आले तर त्याला ती चौकशी रद्दबातल करता येईल आणि सर्व किंवा काही आरोपांबाबत नव्याने चौकशी करण्यासाठी हे प्रकरण परत पाठवता येईल.

(२) याबाबतीतील विशेषाधिकार शिस्तभंगविषयक प्राधिकरण योग्य अशी कारणे लेखी नमूद करून वापरील. उदाहरणार्थ, गंभीर उणिवांमुळे किंवा कार्यपद्धतीच्या स्वरूपामधील दोषांमुळे पहिली चौकशी निष्फळ ठरली या कारणास्तव नव्याने चौकशी करण्याबाबत आदेश देता येतील, परंतु केवळ पहिली चौकशी ही शासकीय कर्मचाऱ्यास अनुकूल ठरली या कारणास्तव तसे करता येणार नाही. दुसऱ्या प्रकारच्या प्रकरणांमध्ये

अभिलेखामधील पुराव्यावरून स्वतःची खात्री पटल्यास
शिस्तभंगविषयक प्राधिकरण, चौकशी प्राधिकरणाच्या
निष्कर्षाशी असहमती दर्शवू शकेल.”

5. It is vehemently submitted that if the Employer notices that the enquiry was conducted in violation of the Principles of Natural Justice, a fresh enquiry can be ordered in the light of clause 7.3, as quoted above.

6. The Petitioner places reliance upon a practically identical case wherein this Court delivered a judgment on 2nd March, 2020 in Writ Petition No.8752 of 2017 (**Vasant Yashvant Thorat v/s Maharashtra Jeevan Pradhikaran and Ors.**), in which, the same clause 7.3 was relied upon. This Court concluded in paragraph nos.7 to 13, as under :

“7. Learned Counsel for the Petitioner submitted that after full-fledged enquiry, where witnesses were examined the Petitioner has been exonerated and merely because the Enquiry Officer’s report is in favour of the Petitioner, the enquiry cannot be re-started. Learned Counsel for the Respondents relied upon the Departmental Enquiry Manual clause 7.3 thereof. Learned Counsel submitted that the enquiry was conducted by non-technical person and after receiving the technical report, it has found power under Rule 7.3 to be exercised. The affidavit-in-reply is accordingly filed.

8. First, we note that the enquiry initiated in the year 2010 and which has been concluded by

report dated 27 May 2011 was a detailed one. The enquiry went on from 27 October 2010, from the appointment of the Enquiry Officer till submission of the report in May 2011. The Respondents appointed perfunctory officer and also examined witnesses. After considering various aspects, including that of technical nature, the Enquiry Officer submitted his report. The report is of 31 pages. On the face of it, it cannot be said that the report submitted was perfunctory.

9. The clause 7.3 on which reliance is placed by the Respondents reads thus :

७.३ नव्याने चौकशी : (१) जर शिस्तभंगविषयक प्राधिकरण, ही चौकशी स्वाभाविक न्यायतत्वांशी सुसंगत अशा प्रकारे झालेली नाही अशा निर्णयाप्रत आले तर, त्याला ती चौकशी रद्दबातल करता येते आणि सर्व किंवा काही आरोपांबाबत नव्याने चौकशी करण्यासाठी हे प्रकरण परत पाठवता येते .

(२) या बाबतीतील विशेषाधिकार, शिस्तभंगविषयक प्राधिकरण योग्य अशी कारणे लेखी नमूद करून वापरू शकते. उदाहरणार्थ गंभीर उणिवांमुळे किंवा कार्यपद्धतीच्या स्वरूपामधील दोषांमुळे पहिली चौकशी निष्फळ ठरली या कारणास्तव नव्याने चौकशी करण्याबाबत आदेश देता येतात, परंतु केवळ पहिली चौकशी ही शासकीय कर्मचाऱ्यास अनुकूल ठरली या कारणासाठी मात्र तसे करता येणार नाही. दुसऱ्या प्रकारच्या प्रकरणांमध्ये अभिलेखामधील पुराव्यावरून स्वतःची खात्री पटल्यास शिस्तभंगविषयक प्राधिकरण, चौकशी प्राधिकरणाच्या निष्कर्षाशी असहमती दर्शवू शकेल.

10. Clause 7.3.1 is for restarting fresh enquiry if the enquiry is held in violation of the principles of natural justice. This clause is not attracted. The clause (2) permits fresh enquiry if there are serious lacuna or procedural defects in the first

enquiry which makes the outcome void de novo or fresh enquiry can be endorsed. This clause specifically incorporates a mandate to ensure that a fresh enquiry is not ordered only because the outcome of the first enquiry is favorable to government servant. This mandate is important in the context of duty to explain why authority finds a serious lacuna in the first enquiry. Merely by reproducing the language of the clause 7.3.2 in the order will not dislodge the mandate of not starting enquiry merely on the ground of it being favorable to the government servant.

11. In the impugned order, there is absolutely no elaboration as what are the serious technical lacuna in the first enquiry to restart an enquiry. The power for restarting an enquiry may lead to harassment of an employee in whose favour the Enquiry Officer has submitted report, therefore a mandate is specifically incorporated. The reasons cannot be substituted by filing reply subsequently in the Writ Petition. If the disciplinary authority does not agree with the findings of the Enquiry Officer's report, then different methodology is provided.

12. There are no reason in the order dated 2 May 2016 as to what were the serious technical lacunas In these facts, the contention of the Petitioner that the re-enquiry has been started afresh only because outcome of first enquiry was in favour of the Petitioner will have to be accepted. The power under clause 7.3 could not be have been used merely because conclusion of the first enquiry was in favour of the Petitioner. Second enquiry initiated by order dated 2 May 2016 will have to be thus quashed and set aside.

13. Accordingly, Writ Petition is allowed in terms of prayer clause (a). If there are any retiral benefits of the Petitioner withheld only on the account of the second enquiry, they shall be disbursed.”.

7. The learned Advocate for the Corporation has made a valiant attempt to persuade us to accept the stand of the Corporation that a vital piece of evidence in the form of the CCTV footage was not presented before the Enquiry Officer by the Presenting Officer of the Corporation. It is further contended that a victim of the alleged assault by the Petitioner was a person conversant only with the Kannada language, whereas the cross-examination was conducted in Marathi. He did not understand anything that was transacted in the enquiry. Hence, Principles of Natural Justice have been violated.

8. On the first count, we do find that the Corporation, who had appointed the Presenting Officer, did not produce the CCTV footage as a piece of evidence in the enquiry. For this reason, the enquiry cannot be faulted. Secondly, if the witness was a person not conversant with any language except Kannada, the Presenting Officer should have taken steps to request a Translator or produced the statement of the witness in a language understood by the Petitioner chargesheeted employee, along with the original transcript in Kannada. Nevertheless, whether the witness was conversant with Marathi or not, was an aspect to be dealt with by

the Corporation who should have been proactive in initiating steps to ensure that a proper translation of the testimony was placed before the Enquiry Officer.

9. The Corporation has waited for the Enquiry Officer to tender a detailed enquiry report. Having noticed that the Petitioner has been exonerated, that the Corporation initiated action of appointing a fresh Enquiry Officer who issued a notice to the Petitioner for starting a second enquiry. The Corporation did not issue a reasoned show cause notice to the Petitioner, calling upon him to show cause as to why a de-novo enquiry should not be started against him. As such, as the second enquiry with reference to the same charges has been started because the findings of the Enquiry Officer favoured the Petitioner, it is evident that this case is covered under clause 7.3 (2) of the Rules.

10. So also, the Petitioner's case is covered by paragraph 12 of ***K.R.Deb v/s The Collector of Central Excise, Shillong, 1971(2) Supreme Court Cases 102***, which reads thus :-

“12. It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because

some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in Rule 15 for completely setting aside previous inquiries on the ground that the report of the Inquiring Officer or Officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to re-consider the evidence itself and come to its own conclusion under Rule 9.”

11. In ***M Kolandai Gounder v/s Divisional Engineer, Tamil Nadu Electricity Board, Thuraiyur and other***, 1997 (1) LLN 371, the

Madras High Court held in paragraph nos 5, 6 and 7 as under:-

“5. With reference to a misconduct, it is open to the employer or the management to conduct an enquiry. After conducting an enquiry, if the report of the enquiry officer is not acceptable, it is open to the management to take a different view from the views already recorded. But, at the same time, no service law provides that the management can go on conducting enquiries again and again till it is sufficiently proved the guilt of the employee. In the present case, it is clearly asserted that the enquiry report was against the Board. No records have been placed before me to hold that the enquiry was not conducted in a fair or proper manner. Nor there is evidence to show that if any infirmity has been committed by the enquiry officer. In such circumstances, if the respondents are allowed to conduct another enquiry on the very same charges,

it will tantamount to harassment

6. The enquiry proceedings can be dropped before it is completed. But after all the witnesses have been examined and the enquiry officer has submitted his report, there is no question of dropping the disciplinary proceedings and initiating another disciplinary proceedings.

7. A reading of the charge memo, dated November 11, 1987, does not contain any reference to the disciplinary proceedings at all. It is also not found as to whether the earlier proceedings had been dropped or not. Since the allegations in the affidavit having not been controverted, I have no other go except to accept statement contained in the affidavit. The affidavit shows that the enquiry was completed and the enquiry report was also submitted. enquiry report was also against the Board. Therefore, in the said circumstances, there is no justification for conducting a second disciplinary proceedings on the very same charges, which have been not proved. Even though the principle of double jeopardy is not applicable, the law permits only disciplinary proceedings and not harassment. The second 'set of disciplinary proceedings with very same charges which have not been proved, tantamount to harassment. Allowing such practice is not in the interest of the public service. In the circumstances, I have no hesitation to hold that the charge memo, dated November 11, 1987, deserved to be quashed. Accordingly, the writ petition is allowed. However, there will be no order as to costs."

12. In ***Kanailal Bera v/s Union of India and others, (2007)***

11 Supreme Court Cases 517, the Hon'ble Supreme Court observed

in paragraph no 6 as under :-

“6. The question as to whether a punishment of confinement to Civil Lines could have been directed or not should not detain us as we agree with the contention raised by learned counsel for the appellant that the purported order dated 5-4-1995 of the disciplinary authority was unsustainable in law. Rule 27 of the Central Reserve Police Force Rules, 1955, inter alia, lays down the procedure for conducting a departmental inquiry. Once a disciplinary proceeding has been initiated, the same must be brought to its logical end meaning thereby a finding is required to be arrived at as to whether the delinquent officer is guilty of charges levelled against him or not. In a given situation further evidences may be directed to be adduced but the same would not mean that despite holding a delinquent officer to be partially guilty of the charges levelled against him another inquiry would be directed to be initiated on the selfsame charges which could not be proved in the first inquiry.”

13. In ***Vijay Shankar Pandey v/s Union of India and***

another, (2014) 10 Supreme Court Cases 589, the Hon'ble Supreme

Court concluded that, ‘the fact that the report submitted by the

Enquiring authority was not acceptable to the disciplinary authority,

cannot be a ground for rejecting the enquiry report and ordering a

second enquiry’.

14. In the peculiar facts as recorded above, and in the light of the judicial pronouncements (supra), the impugned order of conducting a fresh enquiry by appointing a fresh Enquiry Officer, cannot be countenanced. Needless to state, if the Corporation disagrees with the findings of the Enquiry Officer, it is expected to deal with every aspect of the enquiry, more particularly the evidence that is recorded, and based on the same, arrive at a reasoned conclusion as to why it disagrees with the findings and why it concludes that the charges against the Petitioner are proved. Having not followed this procedure, setting in motion a fresh enquiry would be impermissible in law.

15. In view of the above, **this Petition is allowed** to the extent of quashing and setting aside the order of appointment of a new Enquiry Officer dated 14th May, 2025.

16. If the Corporation desires to opt for the option of setting forth reasons to disagree with the findings of the Enquiry Officer, it would be at liberty to follow the due procedure laid down in law. In these circumstances, all contentions of the litigating parties are kept open.

17. **Rule is made absolute in the above terms.**

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)