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

WRIT PETITION NO. 1439 OF 2024

1. Union of India through Secretary,
Ministry of Statistics & Programme
Implementation, Government of India,
Khurshid Lal Bhawan, Janpath, New
Delhi-110001.

2. Deputy Director General,
NSSO, Field Operation Division,
A Block, CGO complex, 3rd Floor,
Seminary Hills, Nagpur 440006 .... **PETITIONERS**

// VERSUS //

Shri Viplab Balwant Meshram
R/o 38/A, Bezonbagh,
Nagpur 440004. .... **RESPONDENTS**

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Shri C.J.Dhumane, Advocate for petitioner(s).
Shri B.Lahiri, Advocate for respondent.

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CORAM : SMT. M.S. JAWALKAR &
PRAVIN S. PATIL, JJ.

DATE OF RESERVING THE JUDGMENT : 23/06/2025.
DATE OF PRONOUNCING THE JUDGMENT: 30/06/2025.

JUDGMENT (PER: SMT. M.S. JAWALKAR, J.)

Heard learned counsel for both the parties.

2. Being aggrieved by the Order dated 19.06.2023 passed by learned Central Administrative Tribunal, Circuit Bench, Nagpur in Original Application No. 2006/2016, the Petitioners have preferred the present Petition.

3. The facts of the case in brief are as under:-

The Respondent herein had challenged the order dated 24/11/2014 passed by learned Appellate Authority before learned Central Administrative Tribunal, Circuit Bench, Nagpur by filing Original Application No. 2006/2016. On 19.06.2023, learned Central Administrative Tribunal was pleased to allow the Original Application, thereby quashed and set aside the order of the Disciplinary Authority dated 30.07.2014 and order of Appellate Authority dated 24.11.2014.

4. The Respondent was appointed on 03.01.1984 as 'Calculating Machine Operator' in the Office of Directorate of Marketing & Inspection, Branch Head Office, Nagpur. He was promoted to the post of ‘Junior Statistical Officer’ on 10.03.2005 through feeder cadre of SSS (erstwhile designated as Assistant

Superintending Officer), and posted at NSSO, FOD, Nagpur. The Petitioners had received complaints dated 13.11.2009 and 15.12.2009 made by one Shri Dinanath Anand Rao Kharbikar against the Respondent regarding furnishing of a false date of birth certificate for securing his appointment to the post of 'Calculating Machine Operator', showing the date of birth as 29.07.1954. As there was substance in the referred complaints, a Charge-sheet was issued on 19.07.2010 to the respondent in connection with submission of false date of birth certificate for securing employment in Government. It is further submitted that, the Inquiry Officer had conducted the Inquiry and submitted his Inquiry Report to the Disciplinary Authority on 16.03.2012. The Disciplinary Authority shared the same with the Respondent herein vide O.M. dated 17.05.2012 with a direction to submit his comments.

5. The Disciplinary Authority of Ministry of Statistics & Programme Implementation on the basis of Inquiry Report and reply submitted by the respondent had decided to impose the

penalty of 'Dismissal from Service' on the respondent with immediate effect vide its order dated 30.07.2014. Therefore, being aggrieved by the dismissal order passed by the Disciplinary Authority, the Respondent had preferred an appeal under Rule 23 of CCS(CCA) Rules 1965. The learned Appellate Authority, after due consideration, dismissed the appeal on 24/11/2014.

6. The petitioner further contended that, the learned Central Administrative Tribunal has erred in observing the instant Order that certificate no. 121797 from book no. 17 remains unchallenged in the inquiry proceeding and no thoughtful consideration has been demonstrated in respect of certificate issued by NMC. It is submitted that, though the main document (book no. 17) could not be produced by P.W. 3 but it is asserted that there are other corroborative pieces of evidence, such as school leaving certificates from 2 schools where the applicant had studied from 5th to 9th standard. The certificate pertaining to NMC has been brought into the Inquiry being conducted by the Inquiry Officer and is expressly mentioned in the Inquiry Report. The

learned Tribunal has not appreciated the depositions of two witnesses i.e. P.W.-1 and P.W.-2 recorded during the course of the inquiry and whose versions were that the Respondent's date of birth was recorded as July 29, 1950 in their schools.

7. It is settled law that, the learned Tribunal cannot function as Appellate Authority in matters pertaining to disciplinary proceedings. The learned Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. The power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Art. 309 of the Constitution. The Hon'ble Supreme Court has categorically observed that, the learned Tribunal cannot function as Appellate Authority in matters pertaining to disciplinary proceedings.

8. The learned counsel for the petitioners relied on the following citations:-

I) State Bank of India V/s. A.G.D. Reddy [(2023) 14 SCC 391

II) Ex-Const/DVR Mukesh Kumar Raigar V/s. Union of India and ors. [(2023) 11 SCC 159]

III) United Bank of India V/s. Biswanath Bhattacharjee [(2022) 13 SCC 329.

9. On the contrary, the Respondent submitted that, while working in the office of the Petitioners, he was accused of serious misconduct and following charges were framed against him:-

i) He was appointed on the strength of Higher Secondary School Certificate (S.No.121797) purported to be issued by Maharashtra State Board of Secondary Education, Nagpur Divisional Board, Nagpur wherein his date of birth has been mentioned as 29th July, 1954. But on verification with the Education Board, it is found that the actual date of birth of Respondent is 29th July, 1950. The Respondent was an overage candidate for appointment to a Government job when his name was sponsored by District Employment & Self Employment Guidance Centre, Nagpur for the post of 'Calculating Machine Operator'. He was of 33 years and 23 days of age as per his actual date of birth i.e. 29th July, 1950. Thus, he had secured a Government job on the strength of fake H.S.S.C. Certificate purported to be issued by Education Board, Nagpur.

ii) Macosabaghh Methodist High School, Nagpur vide their letter dated 22.04.2010 certified that Shri Meshram had taken admission on 01.07.1961 in Class-5th and studied till 05.05.1964 and according to their School Register, the date of birth of Shri Meshram is 29th July, 1950.

iii) Sule High School, Nagpur where Shri V.B. Meshram took admission in Class VIII on 25.06.1964 and left the school on 31.03.1968 on passing the H.S.S.C Examination in 1968 vide School Leaving Certificate (Duplicate) S.No.1674, Register No.8498 confirmed that his date of birth is 29th July, 1950.

iv) M.S. Board of Secondary and Higher Secondary Education, Nagpur Divisional Board, Nagpur vide its letter dated 22.4.2010 informed that the details of H.S.S.C Certiificate (Duplicate) (S.No.121797) are incorrect and the correct details are Shri Viplawa Balvantkumar Meshram, Seat No.13371 passed the H.S.S.C. M-1968: date of Birth is 29th July 1950.

v) Shri V.B. Meshram, Assistant Superintendent Officer had thus committed grave misconduct and violated Rule 3(1)(i)(iii) of the CCS (Conduct) Rules, 1964.

10. The Respondent herein also submitted his response to the said charge-sheet denying the charges on the ground that when he received the offer of appointment from the office of the

Directorate of Marketing & Inspection, Branch Head Office, Nagpur, his original documents were also verified by the competent authority and thereafter, he was permitted to join the department. He further submitted that, it is brought to his notice by his illiterate relatives that, his date of birth was not correctly informed and noted in school where he studied, only to get early admission. And after verifying the various records and relevant documents, it was revealed that, his correct date of birth is 29.07.1954. He submitted the records available at that time before the competent authority for correcting his date of birth and on verification of the same, it was certified that, his correct date of birth is 29.07.1954. Further, he approached to the office of the Maharashtra State Board of Secondary Education, Nagpur, for necessary correction in his certificate.

11. The petitioner no. 2 instituted a court of inquiry to inquire into the charges framed against the applicant. In inquiry, he explained that his original date of birth was 29.07.1954, but birth certificate was not required at the time of admission in

school, the teacher who got him admitted in the school gave his date of birth as 27.07.1950 so as to make him look older than he actually was in order to get early admission. This arrangement continued up to his matriculation. The mother who was away for training during all these period, told him that his actual date of birth was 29.07.1954. So he got his HSSC certificate corrected by filing an affidavit, as the practice prevalent at that time.

12. In disregard of the evidence of date of the birth of the applicant, the Inquiry Officer, in his report, has concluded that, the HSSC Certificate produced by the applicant was fake. Resultantly, the impugned punishment order dated 30.07.2014 came to be issued by Petitioner No. 1 whereby punishment of dismissal from service with immediate effect was imposed upon the applicant. The applicant preferred an appeal which was also rejected. Further it is contended that, in the Inquiry Officer's report and the statements of the witnesses, there is no evidence to suggest that the document issued by the Registrar, Birth and Death Department, Nagpur Municipal Corporation, was ever

challenged. Lastly, the learned Tribunal thereby quashed and set aside the Disciplinary Authority's order as well as the Appellate Authority's order.

13. The learned counsel for the respondent relied on the following citation:-

I) Moni Shankar V/s. Union of India [(2008) 3 SCC 484.

II) Shre Bahadur V/s. Union of India [(2002) 7 SCC 142]

III) Birad Mal Shingwi V/s. Anand Purohit [1988 (Supp) SCC 604.

IV) CIDCO V/s. Vasudha [(2009) 7 SCC 283

V) Vasudha Gorakhnath Mandvilkar V/s. City and Industrial Development Corporation of Maharashtra Ltd. [(2008) 5 Mh.L.J. 147.

14. Heard learned counsel for both the parties. Perused the documents & impugned order on record and considered the citations relied on by both the parties.

15. It is admitted fact that, the respondent/employee was appointed on 03/01/1984 as a 'Calculating Machine Operator' and promoted to the post of 'Junior Statistical Officer' on

10.03.2005. On the basis of complaints received by the petitioners on 13/11/2009 and 15/12/2009 complaining that the respondent furnished a false date of birth certificate for securing his appointment to the post of 'Calculating Machine Operator' showing date of birth as 29/07/1954 whereas his date of birth is 29/07/1950. Near about 25 years of his service, there was no complaint of any sort. The inquiry was conducted by the Department and the report was submitted to the Disciplinary Authority. On the basis of inquiry report and the reply filed by the respondent, the Department decided to dismiss the respondent from service. The said order was challenged before the learned Appellate Authority. The appeal also came to be dismissed. Therefore, the respondent/employee preferred an Original Application No. 2006/2016 before the learned Central Administrative Tribunal, Circuit Bench, Nagpur.

16. It is the contention of the respondent/employee before the inquiry committee that, his date of birth was entered by the teacher who got him admitted in the school, gave his date of birth

as 27/07/1950 in order to get early admission. Though his date of birth was not correctly informed by his illiterate relatives to the school, this arrangement continued upto his matriculation. Then his mother was away for training during all these periods, told him that, his actual date of birth was 29/07/1954. Accordingly, he got his HSSC certificate corrected by filing an affidavit as the practice prevailed at that time.

17. Learned Counsel for the petitioners relied on ***State Bank of India*** (supra)***,*** wherein it is held as under:-

> *"**42.** It is now well settled that the scope of judicial review against a departmental enquiry proceeding is very limited. It is not in the nature of an appeal and a review on merits of the decision is not permissible. The scope of the enquiry is to examine whether the decision-making process is legitimate and to ensure that the findings are not bereft of any evidence. If the records reveal that the findings are based on some evidence, it is not the function of the court in a judicial review to reappreciate the same and arrive at an independent finding on the evidence. This lakshman rekha has been recognized and reiterated in a long line of judgments of this Court."*

18. Similar view is taken in ***Ex-Const/DVR Mukesh Kumar Raigar*** (supra) and ***United Bank of India*** (supra). However, in ***United Bank of India*** (supra), it is also held as under:-

*“**17.** In one of the earliest decisions of Union of India v. H.C. Goel [1963 SCC OnLine SC 16] relating to departmental proceedings, this court observed that where a public servant is punished for misconduct after a departmental enquiry is conducted, a clear case where interference under Article 226 of the Constitution is warranted is when there is no evidence to establish the official’s guilt: (AIR pp. 369-70, paras 22-23)*

“22. ……...

23. ………. The only test which we can legitimately apply in dealing with this part of the respondent's case is, is there any evidence on which a finding can be made against the respondent that Charge 3 was proved against him? In exercising its jurisdiction under Article 226 on such a plea, the High Court cannot consider the question about the sufficiency or adequacy of evidence in support of a particular conclusion. That is a matter which is within the competence of the authority which deals with the question; <u>but the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence.</u> It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not. Applying this test, we are inclined to hold that the respondent's grievance is well founded, because, in our opinion, the finding which is implicit in the appellant's order dismissing the respondent that Charge 3 is proved against him is based on no evidence.”

19. Now let us peruse the evidence on record. The petitioners herein examined one Mr. A.V. Pardhi, Divisional Secretary of the Maharashtra State Board of Secondary & Higher Secondary Education, Nagpur. On the basis of which, the department came to the conclusion that, his date of birth was fake. Perusal of evidence of this witness, in answers given to the question put up in examination-in-chief itself, which reads as under:-

> *"**PO** : Is the duplicate certificate s. No. 121797 issued on 15 th March, 1983 is correct?*
>
> ***PW-3** : I will have to confirm whether it has been issued by our office or not. As per our records his date of birth is 29.07.1950.*
>
> ***PO** : Please confirm it now.*
>
> ***PW-3** : Q.K. I am contacting my office to confirm it through fax.*
>
> ***PW-3** : (after contacting the office over phone and getting reply through fax) Sir, the office copy of book no. 17, year 1983 is not available as per office record.*
>
> ***P.O.** : Is there any procedure for correcting date of birth by*

> *Board on the basis of submission of affidavit without getting any information from/involvement by the concerned school?*
>
> ***PW-3*** ***:*** *No, it can't be done without involvement of school."*

20. In view of above answers, one cannot conclusively say that, the certificate submitted was fake. So far as the witness i.e. Shri Michael Borde, Head Master, Mecosabagh Methodist Church High School, Mecosabagh, Nagpur (P.W. 1) is concerned, this witness deposed that, there is no necessity of birth certificate for admission in 5^{th} Standard. Only TC is required. The witness no. 2 is Shri K.S. Satone, Head Master, Sule High School, Dhantoli, Nagpur. As per this witness, the respondent/employee admitted on 25/06/1964 in 8^{th} Standard and left the school on 31/03/1968 after passing HSSC exam. This witness also deposed that the entry of date of birth in the register is taken on the basis of previous TC. Thus, it was incumbent on the part of the Department to examine or prove from the record of primary school wherefrom the TC is obtained and submitted in the secondary school. In this document, it cannot be said that the charge is proved by the Department.

21. The respondent/employee examined the defence witness Shri Sukhachand Badge in support of his contention that, he was knowing respondent/employee since his birth. The witness was residing in the house of Ramesh Wasnik at Bezonbagh from 1938 to 1970. He deposed that, the mother of the respondent/employee was taking Nursing training in Medical College when he (respondent) was a child. The father of the respondent went to Pendra Road Sanitorium, Bilaspur for treatment of TB. One old lady and her son Ramesh used to look after the respondent/employee. In cross, nothing supporting to the Department is revealed. This witness deposed that, his nephew Harichand was elder than the respondent/employee by two years. He was born in 1952, therefore, date of birth of the respondent is of 1954.

22. Consistently, from the evidence of all the witnesses, it has come on record that, no birth certificate was required at that time for admission. Only on the basis of reports of the parents, the date of birth used to be recorded. In fact, there is no necessity to

discuss the evidence in the present judgment. However, just to verify whether while passing the order, the learned CAT has considered all those aspects, we have discussed these evidence. There is no counter to the evidence of Shri Badge (DW-1) to his statement that, when the respondent/employee was a child, his mother was taking Nursing training in the Medical College and his father was taking treatment for TB. Thus, what was submitted by the respondent/employee in response to the charge that, his date of birth was corrected in the record after returning of his mother from training, appears to be possible.

23. In view of this factual position, we do not see any necessity to discuss the judgments relied on by the Respondent.

24. At any rate, the petitioners/department has not established the charges which were levelled against the respondent/employee who has served near about 25 years to the Department and at the verge of his retirement, his services were dismissed and he was deprived for all the pensionary benefits of his 25 years of service to the Department. Moreover, the

petitioner also obtained the certificate from birth registration authority i.e. Registrar, Birth and Death Department, Nagpur Municipal Corporation, Nagpur registering the date of birth as July 29, 1954. The learned Central Administrative Tribunal, Nagpur has considered all these aspects and passed a well reasoned order. As such, there is no necessity to interfere in the order passed by the learned CAT.

25. Accordingly, the petition stands **dismissed**.

(PRAVIN S. PATIL, J.) **(SMT. M.S. JAWALKAR, J.)**