



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

**WRIT PETITION NO.8457 OF 2019**

Vijay Narayan Joshi,  
Aged 73 years, Occ. Nil,  
R/o 24, Ashirwad, Sant Lahanuji Nagar,  
Civil Lines,  
Wardha.

**Petitioner**

**Versus**

1. State of Maharashtra,  
Through its Secretary Department of Finance,  
Mantralaya, Mumbai-32.
2. Commissioner, Small Savings State Lottery  
Affairs Department, New Administrative  
Building Annex,  
8<sup>th</sup> floor, Mantralaya, Mumbai.
3. Collector, Wardha

**Respondents**

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Mr.Shantanu Khedekar, Advocate h/f Mr. R.V.Shiralakar,  
Advocate for petitioner.  
Mr.A.J.Gohokar, AGP for respondent nos.1 to 3.

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**CORAM : NITIN W. SAMBRE & MRS. VRUSHALI V. JOSHI, JJ.**  
**DATE :MARCH 18, 2025.**

**ORAL JUDGMENT : (Per Nitin W.Sambre, J)**

1. Heard Mr. Shantanu Khedekar, learned counsel appearing for the petitioner and Mr. A.J. Gohokar, learned Assistant Government Pleader appearing for the respondent nos.1 to 3.

2. By consent, the petition is taken up for final disposal at the admission stage.

3. Impugned in the present petition is the order dated 17<sup>th</sup> July, 2002 passed by the respondent no.2 which was confirmed in Appeal by the respondent no.1 vide order dated 19<sup>th</sup> March, 2003 and also the order of the Maharashtra Administrative Tribunal dated 24<sup>th</sup> April, 2015 delivered in Original Application No.183/2003 confirming both the aforesaid orders.

4. The facts necessary for deciding the petition are as under:

The petitioner initially served in the Armed Forces for seven years which status was acknowledged in the order of appointment appointing the petitioner as a Small Savings Officer dated 5<sup>th</sup> February, 1981.

5. Amongst other, the duty that was to be discharged by the petitioner was to promote the Small Savings Schemes floated by the State Government and to extend the assistance to the Agents in achieving the targets. To motivate the agents, who achieve the savings from the public at large, incentives were provided on the quantum of amount invested and the petitioner in the capacity of Small Savings Officer was authorised to recommend the incentives admissible to the agents. The recommendation of the incentives by the petitioner was

based on the investment received and the performance of the said agents.

6. While discharging such duties, on 07<sup>th</sup> June, 1995 the petitioner came to be suspended on the charge of illegal/false recommendations of incentives in favour of the agents as his such act has caused loss of Rs.4,72,332/-.

7. The suspension dated 07<sup>th</sup> June 1995 was followed with an initiation of disciplinary proceedings and vide order dated 17<sup>th</sup> July, 2002 the petitioner was held guilty and a major penalty of dismissal was imposed on him. An appeal was preferred by the petitioner against the order of dismissal dated 17<sup>th</sup> July, 2002 which was confirmed by the State Government and both these orders as such are challenged in the Original Application No.183/2003. The said Original Application also came to be dismissed vide impugned order dated 24<sup>th</sup> April, 2015 and as such this petition.

8. In all, five Charges were levelled against the petitioner, out of which two were proved and same has led to a show cause dated 20<sup>th</sup> April, 2002 based on the Enquiry Report dated 17<sup>th</sup> October, 2000.

9. While questioning the aforesaid three orders, Mr. Khedekar would invite attention of this Court to the provisions of Rule 5 of the Maharashtra Civil Services (Disciplinary and Appeal) Rules, 1979 which provides for the minor and major penalties. According to him, the only authority which is vested with the petitioner as could be inferred and the

same is also not disputed by the respondents is the right to recommend the payment of incentives. According to him, since the recommendations are not binding on the Competent Authority who has sanctioned the incentives, the petitioner cannot be saddled with a disproportionate penalty of dismissal from service.

10. Apart from above, his contentions are that the respondents ought to have considered the background of the petitioner being an Ex-serviceman and his exoneration in the preliminary enquiry caused by the Deputy Collector. He has also claimed that the documents were not supplied and as such there is a denial of an opportunity of hearing as even the opportunity of examining the witnesses was not provided. As such, it is claimed that based on an insufficient evidence disproportionate penalty is imposed on the petitioner. He would further claim that the petitioner is already acquitted of the criminal charge and that being so, the same should have been considered at the time of order of dismissal or by the Tribunal.

11. As against above, Mr.Gohokar, learned Assistant Government Pleader, would support all the three orders. According to him, the disciplinary proceedings are based on the principles of preponderance of probabilities and in *stricto sensu* the provisions of the Evidence Act are not attracted. He would claim that not only the Maharashtra Administrative Tribunal but also the Authorities below have already looked into the evidence of the various witnesses so as to infer that the petitioner was instrumental in preparing false claims and forwarding the

same with forged seals and stamps of the post office. As such, the Assistant Government Pleader would further claim that there are concurrent findings and as such the petition is liable to be dismissed.

12. We have considered the rival claims.

13. The order of the Tribunal so also the other material placed on record depicts that the respondents relied on 11 documents which were made available to the petitioner. Based on the same, a full-fledged enquiry was conducted. Once the enquiry was conducted, the order of exoneration in the preliminary enquiry will hardly be of any significance.

14. Apart from above, had it been a case that the petitioner was denied an opportunity to cross-examine the witnesses, he could have moved an application immediately to the Authority i.e. Enquiry Officer which he has failed to. Rather his conduct of submitting written notes of arguments speaks of the petitioner wholeheartedly participating in the enquiry proceedings and that being so, it cannot be inferred that the petitioner was not offered a reasonable opportunity of hearing in the matter.

15. There is enough evidence which was brought on record by examining the witnesses, who were Small Savings Agents, who were also duly cross-examined by the petitioner. The *modus operandi* adopted by the petitioner in the matter of preparing false claims can be easily inferred upon by plain analysis of the said evidence.

16. Apart from above, we hardly see any material on record to infer that the authorities below have recorded any perverse finding. It is a settled position of law that even if the petitioner is acquitted in the criminal trial that won't weigh in the matter of his exoneration from the departmental proceedings as both are based on different principles and the evidence adduced in the criminal proceedings are not governed by the disciplinary proceedings or its outcome.

17. In this view of the matter, we see no reason to cause interference in the extraordinary jurisdiction or to infer that a disproportionate penalty is imposed on the petitioner. That being so, the petition fails and stands dismissed. No costs.

**(MRS.VRUSHALI V. JOSHI, J.)      (NITIN W.SAMBRE, J.)**