



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

WRIT PETITION NO. 7633 OF 2025

1) The State of Maharashtra,
Through its Secretary,
Agricultural, Husbandry and
Fisheries, Mantralaya, Mumbai-32

2) The Appellate Authority and
Commissioner of Agriculture,
Maharashtra State, Pune-01.

3) The Divisional Joint Director
Agriculture, Nagpur Division,
Nagpur.

....PETITIONERS
(Ori. Respondents)

....VERSUS....

Shri Vinay Kumar s/o. Abasaheb
Juare, aged about 50 years,
Occ. Service, R/o. Sitabuldi,
Tah. Armori, Dist. Gadchiroli

....RESPONDENT
(Ori. Applicant)

Ms. M.A.Barbde, AGP for petitioners/State.

CORAM : ANIL S. KILOR AND
RAJNISH R. VYAS, JJ.

DATE : 10/12/2025

JUDGMENT (PER: RAJNISH R. VYAS, J.)

Heard learned counsel for the petitioners.

2. The petitioners/State has preferred this petition challenging the order passed by the learned Maharashtra Administrative Tribunal, Nagpur Bench, Nagpur (for short, 'Tribunal') in Original Application No. 743/2022 dated 11/01/2024, whereby, the order dated 23/12/2021 and 28/01/2021 passed by the original respondent nos. 2 and 3 were set aside.

3. By order dated 28/01/2021 in Departmental Inquiry, the punishment was imposed upon the original applicant, whereas by order dated 23/12/2021, the appellate authority has modified the punishment. The punishment which was finally imposed upon the original applicant was recovery of an amount of Rs. 2,71,500/- from his regular salary by deducting amount of Rs. 5,430/- in 50 months. Likewise, the permanent stoppage of one increment was also imposed upon him.

4. The aforesaid punishment was outcome of Disciplinary Inquiry initiated against the original applicant in the month of July, 2010. Following were the charges against the original applicant in the Departmental Inquiry:-

- I) Failure to perform duty,
- II) Non-payment of bills on time,
- III) Unnecessarily keeping amount in locker, which is obtained under various extension schemes, and
- IV) Misappropriation of Government Fund by pre-planning and therefore, liable to deposit the amount of Rs. 2,71,500/.

5 The Inquiry Officer submitted his report and observed that the Charge no. 1 so also the Charge No. 3 were partially proved. The Charge Nos. 2 and 4 were found to be 'proved'. The Disciplinary Authority considering the report submitted by the Inquiry Officer concurred with its report and imposed the punishment of recovery of some of Rs. 2,71,500/- from the salary of original applicant within 50 months by equal

monthly deduction of Rs. 5,430/-/-. Further, permanently, three increments were also stopped.

6. The Appellate Authority modified the said punishment dated 28/01/2021 by order dated 23/12/2021 and instead of stoppage of three increments reduced it to the stoppage of one increment permanently.

7. At this stage, it is necessary to mention here that the original applicant was prosecuted for commission of offences punishable under Sections 409 and 203 of Indian Penal Code on an allegation that the original applicant at the relevant time was working as an accountant and cashier in the office of Taluka Agricultural Officer, Armori. On 25/10/2004, he found that cash-box was open and cash of Rs. 2,75,000/- was missing. He therefore, informed his Officer. His Officer then lodge a report. During the course of investigation, it was found that the original applicant has committed the crime and consequently, the offences punishable under Sections 420, 409, 203, 120(B) r/w. Section 34 of IPC came to be registered against the original

applicant and co-accused by named Manik. The completion of investigation resulted into filing of charge-sheet and registration of Regular Criminal Case No. 24/2010 and charges for the offences punishable under Section 409 and 203 of IPC were framed.

8. The applicant was convicted by the Magistrate's Court for the aforesaid two Sections. The order of Magistrate was challenged before the Additional Sessions Judge, Gadchiroli in Criminal Appeal No. 08/2014 by the original applicant and on 05/02/2020, he was acquitted.

9. In this background, the learned AGP for the petitioners/State submits that the learned Tribunal ought not to have set aside the punishment imposed upon the original applicant by the Disciplinary Authority and the Appellate Authority as the charges were different in two proceedings. She submitted that the scope of Disciplinary Inquiry and Criminal Trial is totally different and therefore, the learned Tribunal was not right in interfering the punishment. According to her, the

learned Tribunal failed to consider that, the witnesses in the departmental proceedings were different and therefore, the order impugned be set aside.

10. We have tested the argument advanced by the learned AGP and have also gone through the record of the case. The following principles have been taken into consideration while deciding the controversy involved.

11. The Hon'ble Apex Court in the case of **Inspector General of Police V/s. S. Samitheram** reported in (2013) 1 SCC 598 has held that, *“an acquittal in a criminal case does not automatically nullify a valid departmental punishment for public servant.”*

12 In **G.M. Tank V/s. State of Gujarat** reported in (2006) 5 SCC 446, the Hon'ble Apex Court has observed that *“when criminal and departmental proceedings are based on identical facts, evidence and witnesses, the findings should align.* It was also observed that *“allowing the disciplinary findings to stand after an acquittal would be unjust.”*

13. In the case of **State Bank of Hyderabad V/s. Kata Rao** reported in (2008) 15 SCC 657, it was held that *“departmental action must be based on independent findings, not just the criminal case.”*

14. We are also aware of the fact that, while exercising jurisdiction under Article 226 of the Constitution of India when the order of Tribunal is tested, it is required to be seen whether there is perverse finding or jurisdictional error. Perusal of judgment of the learned Additional Sessions Judge, Gadchiroli, would reveal that it has in detail dealt with evidence of the witnesses produced during the course of Trial and has given the following findings:-

“23. Now in above discussed facts and circumstances, material and important question has to be decided. As per prosecution case, accused Vinay Kumar has misappropriated amount in dispute. In this regard, there is controversy. In this situation, prosecution has strongly relied upon the evidence of PW5-Rajendra Dhole (Exh.57). He is claiming that as per instruction of his superior, he with the help of Shri. Talmale (PW4) audited the account of office of accused no.2. Needless to say that entire case is based on audit report. He also testified about fact of committing misappropriation of the amount of Rs.2,71,500/- by both accused persons i.e. Vinay Kumar and Manik Khobragade. Prosecution side had attempted to exhibit audit report during course of

recording evidence of PW5-Rajendra Dhole. Objection was taken from the side of accused persons on the ground that said audit report was in the form of xerox copy. Consequently, audit report was marked as Exh.58 by learned trial Court with endorsement that probative value of such document can be decided on merit. In such circumstances, learned trial Court while passing impugned judgment, has observed that such audit report being xerox document can not be read in evidence. Admittedly, prosecution had not obtained permission for being proved such document (xerox of Audit report) by way of secondary evidence. In this situation, such finding recorded by learned trial Court that xerox copy of audit report cannot be read in evidence, is correct one.

24. Perusal of record, it will find that on the basis of alleged audit report only, offence regarding committing of alleged misappropriation of amount in dispute was registered. As such, entire case of prosecution was based on such audit report. But prosecution failed to prove such material and important document-Audit Report Exh.58, according to the law. When learned trial Court came to the conclusion that audit report Exh.58 cannot be read in evidence, then in such circumstance, it ought not to have observed that factum of committing alleged misappropriation was proved on record. But it failed to exercise its jurisdiction.”

15. The language of the charges framed in the Departmental Inquiry and Criminal Trial though may be different in language but core issue of misappropriation was decided along with the allied issues. Therefore, it cannot be said that the charges in Departmental Inquiry and Criminal Trial were different. It is not the form which is required to be looked into but the substance.

16. In that view of the matter, we do not find any perversity or jurisdictional error which is committed by the learned Tribunal while passing the judgment impugned and therefore, we have no other option to dismiss the petition. Accordingly, the petition stands **dismissed**.

(RAJNISH R. VYAS, J.)

(ANIL S. KILOR, J.)

B.T.K.