

(2002) 12 BOM CK 0051

In the Bombay High Court

Case No : Writ Petition No. 7054 of 1999

Gajanan Babu Patil

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 13-12-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 420

Citation : (2003) 2 ALLMR 194 : (2003) 3 BomCR 360 : (2003) 1 MhLj 988

Hon'ble Judges : V.G. Palshikar, J; V.G. Munshi, J

Bench : Division Bench

Advocate : Vijay Patil, for the Appellant; J.S. Pawar, AGP, for the Respondent

Final Decision : Allowed

Judgement

V.G. Palshikar, J.—By this petition, the petitioner has challenged the orders passed by the Maharashtra Administrative Tribunal and the Disciplinary Authority i.e. Pay and Accounts Officer as also the Appellate Authority.

2. Few facts necessary for adjudication of this petition stated briefly are that the petitioner was employed as a clerk in the Pay and Accounts Office, Government of Maharashtra, Bombay. When the petitioner was functioning as a clerk in the Pay and Accounts Office at Bombay, it was alleged that in the year 1976 some bills were forged by the petitioner and prepared the cheques thereon. It was considered to be a fraud practice by the petitioner and therefore complaint was lodged with the police. The police after investigation filed a criminal case in the Court of the Metropolitan Magistrate, wherein the learned Judge observed that there is no evidence against the accused Nos. 1 and 2, i.e. petitioner and another employee, and he therefore discharged the accused persons. After the petitioner was accordingly discharged he was reinstated in service from suspension and nothing has done in the matter for a period of three years. Thereafter in the year 1981 charge sheet was issued to the petitioner wherein two of the charges were same as in the criminal case and third was pertaining to the misuse of the

government quarters by allowing someone else to stay there. Enquiry was duly conducted thereafter and ultimately on 21st April 1986 order of punishment was passed. The order passed by the disciplinary and enquiring authority reads as under :

"I the undersigned do hereby dismiss, Shri G. B. Patil Power Division Clerk, from Government Service with effect from 21-4-1986 (A. M.)"

Sd/- Pay and Accounts Officer.

3. An appeal was preferred by the petitioner against this order to the Director and the Director dismissed the appeal by a single line, saying that the action taken by the disciplinary authority is correct and needs no interference.

4. Thereafter the petitioner filed further appeal before the government of Maharashtra and that also rejected by the Secretary to the Government of Maharashtra. All these orders therefore were challenged before the Maharashtra Administrative Tribunal on several grounds and it was contended that several illegalities have been committed by the disciplinary authority and the appellate authority, and therefore the order of removal from service is vitiated. It was contended that all principles of natural justice have been violated. No reasons have stated by the disciplinary authority for dismissing the petitioner after departmental proceedings and he has not marshalled the evidence against the petitioner if there was any. According to the learned counsel, therefore the tribunal ought to have set aside those orders and reinstate the petitioner. The Tribunal not having done that the petitioner has come up before this court under Article 226 of the Constitution.

5. The learned counsel appearing on behalf of the petitioner submitted the following grounds.

1) The entire order of the disciplinary authority is vitiated for total absence of evidence. It is a case of no evidence and therefore this court can in exercising its power under Article 226 of the Constitution, intervene in the matter and set aside those orders.

2) The order of the disciplinary authority is based on no evidence and therefore is liable to be set aside.

3) No evidence was recorded of any kind by the enquiring authority or disciplinary authority and reliance has been placed only on certain alleged admissions, alleged to have been made by the petitioner before the police during the enquiry of the complaint made u/s 420 Indian Penal Code etc. Even though admissions are not proved, the concerned police officer before whom it is alleged to have been made is not examined to prove that the statement was made before him. Therefore it is a case of total lack of evidence, resulting in vitiating the entire order.

4) The orders are also liable to be quashed for the reason that the authorities

have not passed any speaking order, even the rules of discipline of the State of Maharashtra requires passing of such order. The Maharashtra Civil Services (Discipline and Appeal) Rules provide for elaborate procedure and manner in which a departmental enquiry for major punishment shall be carried out. According to the learned counsel there is total non-observance of this rule while passing the impugned order by the disciplinary authority and therefore vitiated.

5) There is failure to exercise jurisdiction by the Tribunal to apply this well settled principles of law and therefore the order of Tribunal is also liable to be quashed.

6. The learned Government Pleader however supported the orders by saying that there is some evidence before the authority and on the basis of that evidence the impugned orders are passed. It is not a case of total lack of evidence and therefore interference by this court under Article 226 is not possible.

7. Having considered the rival submissions we have also perused the impugned orders. It must be noted that in this case the petitioner was discharged for total lack of evidence by the competent court of criminal jurisdiction. It is true that the law permits holding of departmental enquiry in spite of such acquittal or discharge and it is also possible and permissible to departmentally punish an employee for the misconduct with which he is charged even though there is acquittal by the court. It is well settled principle of law that the standard of proof requiring for criminal court are stringent than those require in departmental proceeding. In criminal proceeding the prosecution has to prove the guilt beyond reasonable doubt, and in departmental enquiries the department has to establish the commission of misconduct, and the evidence for which would be much lessor. But it is equally undisputed proposition of law that there has to be some evidence to sustain the order of punishment in departmental proceeding.

8. The legal position that the disciplinary authority as also the appellate authority has to give reasoned order is always settled and has now been finally laid down by the Full Bench of this court interpreting the provisions of Maharashtra Rules regarding conduct of departmental enquiry and proceedings. This court has specifically laid down the manner in which the orders are to be passed. We introduced what has been laid down by the Full Bench suffice to say that the orders passed by the disciplinary authority as also the appellate authority required to be speaking order. As observed already the order of the disciplinary authority as also the appellate authority is not a speaking order and consequently they are not sustainable in law. Even if it is assumed in favour of the respondent that the disciplinary authority itself being enquiring authority and it has given an enquiry report holding the petitioner guilty, no additional reasons need be given in the order of punishment. In such a case, according to law, more responsibility lies on the earlier authority to give its finding on each point raised. The appellate court has totally failed to perform its duty. No reason has given why the appeal of the petitioner was dismissed. No reason is given to defend the insufficiency of evidence or absence of evidence. We therefore find it impossible to sustain the orders of punishment as passed by the authorities below. In the

result therefore the petition succeeds and it is allowed.

1) The order dated 21-4-1986 passed by the Pay an Accounts officer, Government of Maharashtra, 2) The order dated 4-2-1987 by the Director of Accounts and Treasuries, Maharashtra State, 3) The order dated 3-5-1993 by the State of Maharashtra, and 4) The order dated 4-9-1998 by the Maharashtra Administrative Tribunal are quashed and set aside being unsustainable in law. The petitioner is directed to be reinstated in service with all the consequential benefits.

In the result therefore the petition succeeds. Rule made absolute in terms above. However, there is no order as to costs.