

(2018) 12 BOM CK 0091
In the Bombay High Court
Case No : Writ Petition No. 489 of 2017

Manojkumar Nemaji Shahare

APPELLANT

Vs

Zilla Parishad, Nagpur Through Chief Executive Officer,
Nagpur And Others

RESPONDENT

Date of Decision : 22-12-2018

Acts Referred:

Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 — Rule 8, 12
Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1964 —
Rule 8, 23

Citation : (2018) 12 BOM CK 0091

Hon'ble Judges : Manish Pitale, J

Bench : Single Bench

Advocate : P.D. Meghe, V.D. Raut, P.S. Tembre

Final Decision : Allowed

Judgement

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned counsel appearing for the parties.
2. The petitioner has challenged imposition of penalty of withholding of two increments permanently and to treat the period of his suspension as being on suspension, on the grounds; firstly that the enquiry leading to imposition of penalty was initiated against him under Rules that were not applicable to him, thereby vitiating the entire enquiry; secondly that the charge sheet was issued to him not by the disciplinary authority but by the appellate authority, thereby vitiating his right to appeal before the appellate authority against the order of penalty imposed by the disciplinary authority and thirdly that the material on record, including the enquiry report clearly demonstrated that the petitioner could not be held guilty of the charges levelled against him and that, therefore, the imposition of penalty was wholly unsustainable even on merits.
3. The petitioner was appointed as a Gram Sevak on 06.10.1992 and he was promoted to the post of the Village Development Officer in the year 1999.

Thereafter, in February 2007 he was promoted as Extension Officer, Panchayat. As per Government Resolution dated 22.09.2003 issued by the Department of Revenue and Forests, Government of Maharashtra, amount collected by Collector of Stamps towards stamp duty was to be paid to the Zilla Parishad to be further allotted to the Gram Panchayats wherein the properties were situated, in respect of which transactions had taken place. A letter was received by the respondent no.1 Zilla Parishad for such distribution of amounts to the Gram Panchayats for the financial year 2010-2011, however, the list of Gram Panchayats was not received till 30.03.2011. Being the Extension Officer Panchayat, the petitioner prepared a note for distribution of the said amount of stamp duty to the Gram Panchayats before 31.03.2011. This note was placed by the petitioner before the Block Development Officer who had approved of the same. But, later the petitioner came to know that the Block Development Officer had changed the amounts to be allotted to the various Gram Panchayats and that such distribution of amounts was not as per the note forwarded by the petitioner.

It was the case of the petitioner that Block Development Officer got another note prepared from a Gram Sevak and asked the petitioner to sign the said note, which the petitioner refused to sign. As the Block Development Officer pressurized him to sign the same, he brought this fact to the notice of the President of the respondent no.1 Zilla Parishad. It is the case of the petitioner that the Block Development Officer made changes by overwriting on the note as well as in the cash book and cheque books, but, the petitioner did not put his initials or signatures on such changes.

4. On 08.12.2011, the Block Development Officer was summoned by the Panchayat Samiti as various Gram Panchayats raised protest on inappropriate distribution of the amounts to them. In the proceedings before the Panchayat Samiti, the Block Development Officer and the petitioner were called in order to explain such inappropriate distribution of amounts. The Block Development Officer admitted that he had made mistake in making such distribution of amounts while the petitioner stated that he had put up his note for correct distribution of amount but, it was not accepted and a copy of the same was submitted to the President of the Panchayat Samiti. Thereafter, on 20.12.2011, the petitioner submitted a representation before the Deputy Chief Executive Officer (Panchayat) of the respondent no.1 Zilla Parishad, stating the details regarding the note put up by him and the alleged pressure put by the Block Development Officer on him. It was submitted by the petitioner that changes made were entirely the responsibility of the Block Development Officer and that enquiry may be instituted in respect of the same.

5. On 26.03.2012, a show cause notice was issued to the petitioner, calling upon him to explain as to why action should not be taken against him for the alleged irregularities in distribution of the said amounts to the Gram Panchayats. On 30.03.2012, the petitioner submitted his reply and pointed out that he had submitted report to the Block Development Officer, who had made changes in the

same, leading to the final distribution of amounts to the Gram Panchayats. A departmental enquiry was initiated against the petitioner and the Block Development Officer. It was a joint enquiry initiated under the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. The petitioner was suspended on 02.04.2012, but later the suspension was revoked by order dated 30.08.2012 and the petitioner was posted at Panchayat Samiti Bhiwapur. Upon the revocation of the suspension, on 01.09.2012, a charge sheet and memo of charges was served on the petitioner, to which he submitted his reply and denied the charges levelled against him. The Enquiry Officer prepared report dated 13.03.2014, concluding that the petitioner and the Block Development Officer were jointly responsible for the wrongful distribution of amounts to the Gram Panchayats. On 18.12.2014, the respondent no.2 Divisional Commissioner sent the enquiry report to the Chief Executive Officer of the respondent no.1 Zilla Parishad to take appropriate action against the petitioner. The Chief Executive Officer of respondent no.1 Zilla Parishad issued show cause notice dated 03.03.2015 proposing to impose two penalties against the petitioner of withholding two increments permanently and to treat the period of suspension as suspension, to which the petitioner submitted his reply dated 11.03.2015. Thereafter, on 30.03.2015, the respondent no.1 passed the impugned order, imposing both the aforesaid penalties on the petitioner.

6. Thereafter, the petitioner filed appeal against the said order under the Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1964, before the respondent no.2 Divisional Commissioner. The respondent no.3 Additional Commissioner heard the petitioner on the said appeal and by order dated 08.08.2016, the appeal was dismissed and the order passed against the petitioner stood confirmed. The petitioner had brought to the notice of the said authority that punishment of withholding of two increments permanently was also imposed upon the Block Development Officer, but, that his appeal was allowed and the penalty was modified and reduced to withholding of one increment without any future effect. The respondent no.3- Additional Commissioner did not take into consideration the said order whereby the penalty imposed on the Block Development Officer had been reduced, while dismissing the appeal of the petitioner.

7. Aggrieved by the said order dated 30.03.2015 issued by the respondent no.1 imposing said penalties on the petitioner and order dated 08.08.2016 whereby the respondent no.3 dismissed the appeal of the petitioner, the present writ petition has been filed.

8. Mr. P.D. Meghe, learned counsel appearing for the petitioner, has submitted that the very initiation of the enquiry against the petitioner was vitiated because a joint enquiry was conducted against the petitioner and the Block Development Officer under the provisions of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, because the said Rules were applicable only to the Block Development Officer and the petitioner being a Class-III employee, was

governed by the Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1964. It was submitted that when the very initiation of the enquiry against the petitioner was based on Rules not applicable to him, the enquiry report and the penalties imposed on the petitioner in consequence thereof, were rendered unsustainable. It was further submitted by the learned counsel appearing for the petitioner that in the present case the memo of charges were issued against the petitioner by the respondent no.2- Divisional Commissioner, again under the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. Apart from the fact that the memo of charges were issued under Rules that were not applicable to the petitioner, the respondent no.2- Divisional Commissioner was the appellate authority for the post held by the petitioner. It was submitted that the memo of charges could have been issued against the petitioner only by the Chief Executive Officer of the respondent no.1 Zilla Parishad, being the disciplinary authority and, therefore, issuance of memo of charges by the respondent no.2 appellate authority, was unsustainable. It was further submitted that when the enquiry was initiated on memo of charges issued by the appellate authority and the order imposing penalty was issued by the disciplinary authority i.e. the Chief Executive Officer of the respondent no.1 Zilla Parishad, the appeal against such order was required to be filed before the respondent no.2 appellate authority. It was submitted that when the memo of charges itself were issued by the appellate authority, the appeal that the petitioner was required to file against the order of the disciplinary authority before the very same appellate authority, vitiated the right of appeal available to the petitioner. On this count also the learned counsel for the petitioner submitted that the impugned orders were unsustainable.

9. On merits, it was submitted on behalf of the petitioner that a perusal of the material on record would show that from the very beginning the petitioner had apprised the respondent no.1 about the note put up by him on 31.03.2011 for proper distribution and allotment of funds to the various Gram Panchayats, but it was the Block Development Officer who had made changes in the same leading to anomalous distribution of funds. According to the learned counsel for the petitioner, there was sufficient material on record to show that the blame, if any, for anomalous distribution of funds to the Gram Panchayats lay with the Block Development Officer and that, therefore, the petitioner could not be held guilty of the charges levelled against him. It was submitted that being the drawing and disbursing officer, it was the sole responsibility of the Block Development Officer, on the issue of distribution of funds to the Gram Panchayats and that the petitioner was wrongly held liable along with him. It was further submitted that the reduction in penalty of the Block Development Officer on his appeal being partly allowed, was also ignored by the respondent no.3 while passing the impugned order and dismissing the appeal filed by the petitioner. On this basis, it was submitted that the impugned orders deserved to be set aside.

10. The learned counsel relied upon the judgments of the Hon'ble Supreme Court in the case of Surjit Ghosh .vs.Chairman & Managing Director, United Commercial

Bank and ors. reported in (1995) 2 Supreme Court Cases 474 and Raghubir Singh .vs. General Manager, Haryana Roadways, Hissar reported in 2014(10) SCALE 135.

11. Per contra, Mr. V.D. Raut, learned counsel appearing for the respondent no.1, submitted that the writ petition deserved to be dismissed because the impugned orders imposing penalty and dismissing appeal of the petitioner were justified on facts and law. It was submitted that the arguments raised on behalf of the petitioner regarding the enquiry being vitiated due to application of wrong set of Rules and the memo of charges being issued by the appellate authority instead of the disciplinary authority, did not deserve consideration because the petitioner failed to demonstrate as to what was the prejudice suffered by him in the present case. It was submitted that the petitioner could not demonstrate violation of any principles of natural justice and that there was no material to come to the conclusion that the petitioner had suffered any prejudice and, therefore, it was submitted that the said technical objections raised on behalf of the petitioner did not deserve consideration. It was submitted that there was sufficient material found in the enquiry report as also the oral and documentary evidence on record, indicating that the petitioner was responsible for the anomalous distribution of funds to the Gram Panchayats and that, therefore, the quantum of punishment/penalties imposed upon the petitioner was justified. The learned counsel relied upon judgments of the Hon'ble Supreme Courts in the cases of Balbir Chand .vs. Food Corporation of India Ltd. reported in (1997) 3 Supreme Court Cases 371, Chairman, A.P. State Electricity Board .vs. M. Kurmi Naidu reported in (2006) 8 Supreme Court Cases 62, Goa Shipyard Ltd. .vs. Babu Thomas reported in (2007) 10 Supreme Court Cases 662, The Administrator, Union Territory of Dadra and Nagar Haveli .vs. Gulabhai M. Lad reported in (2010) 5 Supreme Court Cases 775 and A. Sudhakar .vs. Postmaster General, Hyderabad and another reported in (2006) 4 Supreme Court Cases 348.

12. Heard counsel for the parties and perused the record.

13. The submissions advanced on behalf of the petitioner are on procedural flaws as also on merits of the case. The first contention raised on behalf of the petitioner is that his services stood governed by the provisions of the Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1964, as at the relevant time, he was working as an Extension Officer, Panchayat. It is an admitted position that the Block Development Officer was governed by the provisions of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. A joint enquiry was initiated against the petitioner and the Block Development Officer for the charges pertaining to anomalous distribution of funds to the Gram Panchayats. Although, no fault could be found with initiation of a joint enquiry, as the charges against both the delinquents appear to be similar, but it is an undeniable fact that the services of the petitioner and the Block Development Officer were governed by the aforesaid two different sets of Rules. A perusal of the documents on record shows that the memo of charges was issued on

01.09.2012 against the petitioner by the respondent no.2 Divisional Commissioner specifically stating that the said charges were being levelled against him under the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. A specific reference was made in the said document to Rules 8 and 23 of the said Rules, for the violation of which action was proposed against the petitioner. This shows that the very initiation of the enquiry against the petitioner was under the rules that were admittedly not applicable to him. There is no dispute about the fact that the services of the petitioner were governed by the Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1964.

14. The enquiry report on record also opens with the words that a joint enquiry was conducted against the petitioner and the Block Development Officer under Rules 8 and 12 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. The report holds the petitioner and the Block Development Officer jointly liable for the aforesaid charge of anomalous distribution of funds to the Gram Panchayats. In the judgment in the case of Raghubir Singh .vs. General Manager, Haryana Roadways, Hissar (supra) relied upon by the learned counsel for the petitioner, it has been found that the disciplinary proceedings initiated under the Haryana Civil Services (Punishment and Appeal) Rules, 1987 against the employee therein were untenable in law because the said person was actually governed by the Model Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946. Thus, it becomes apparent that the very initiation of enquiry in the present case was vitiated because it was initiated under a set of rules that were not applicable to the petitioner. The said fundamental defect in the very initiation of enquiry and issuance of memo of charges for alleged violation of rules that were not even applicable to the petitioner, cannot be cured by contending that the petitioner was required to show the prejudice suffered by him. The contention raised on behalf of the respondent no.1 is untenable that even if the very initiation of enquiry and issuance of memo of charges was for violation of a set of rules not applicable to the petitioner, no fault could be found with the enquiry as the petitioner was required to demonstrate the prejudice suffered by him. Therefore, it becomes evident that the said contention raised on behalf of the petitioner deserves to be accepted.

15. The second contention raised on behalf of the petitioner was that his right of appeal stood vitiated because the memo of charges for initiation of enquiry were issued by the respondent no.2 -Divisional Commissioner who was the appellate authority of the petitioner and not by his disciplinary authority i.e. the Chief Executive Officer of respondent no.1-Zilla Parishad. According to the petitioner, when the appellate authority had applied its mind and issued the memo of charges against the petitioner, an appeal to the very same authority on the order of penalty issued by the disciplinary authority, vitiated the right of appeal available to the petitioner. In this regard, the learned counsel for the petitioner relied upon a judgment of the Hon'ble Supreme Court in the case of Surjit Ghosh .vs.Chairman & Managing Director, United Commercial Bank (supra). In the said judgment, it was held that when an appellate authority, acting as

disciplinary authority inflicted order of penalty upon an employee, he stood deprived of a right of appeal and that rendered the order of penalty itself as illegal. As opposed to this, the learned counsel appearing for the respondent no.1 relied upon judgments of the Hon'ble Supreme Court in the case of Chairman, A.P. State Electricity Board .vs. M. Kurmi Naidu (supra) wherein, after noticing the judgment in the case of Surjit Ghosh (supra), the Hon'ble Supreme Court held in the facts of that case that even if order of penalty/punishment was issued by the appellate authority, that in itself would not render such an order illegal, as long as the employee had further right of appeal, which was found in that case to be available to the employee. It was held that when the right of appeal was not taken away, it could not be said that the employee had suffered any prejudice. The learned counsel for the respondent no.1 also relied upon judgment in the case of Goa Shipyard Ltd. .vs. Babu Thomas (supra) for the same proposition.

16. In the present case, it cannot be said that the appellate authority had inflicted the order of penalty/punishment against the petitioner because it was issued by the Chief Executive Officer of respondent no.1, who was the disciplinary authority of the petitioner. But, it is an admitted fact that the memo of charges and initiation of enquiry in the present case against the petitioner was not at the hands of the disciplinary authority i.e. the Chief Executive Officer of respondent no.1 Zilla Parishad. The very initiation of enquiry and issuance of memo of charges in the present case against the petitioner was by the respondent no.2 Divisional Commissioner. The said respondent is the authority to whom an appeal could be filed by the petitioner against an order of penalty imposed by his disciplinary authority. When the respondent no.2 Divisional Commissioner issued the memo of charges against the petitioner, it could not be said to be a mere formality and there was clear application of mind by the said respondent while issuing the memo of charges. Thus, the said respondent being the appellate authority for the petitioner, formed an opinion on the available material against the petitioner for issuance of the memo of charges. When the disciplinary authority i.e. the Chief Executive Officer of the respondent no.1 passed the order of penalty by impugned order dated 30.03.2015, under the Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1964, the petitioner could file appeal only before the respondent no.2 Divisional Commissioner i.e. the very appellate authority, who had issued memo of charges against him. This clearly shows that even in the facts of the present case, the right of appeal available to the petitioner was vitiated. It could not be said to be cured because there was no further right of appeal available to the petitioner. As a result, in the facts of the present case, the judgments relied upon by the learned counsel for the respondent no.1 in the cases of Chairman, A.P. State Electricity Board .vs. M. Kurmi Naidu (supra) and Goa Shipyard Ltd. .vs. Babu Thomas (supra), would not be applicable.

17. The petitioner clearly suffered prejudice in respect of right of appeal available to him before the respondent no.2 Divisional Commissioner i.e. the appellate authority, in the facts of the present case. Another relevant factor in the present

case, showing the defective nature of proceedings initiated against the petitioner, was that while the memo of charges were issued and the enquiry was initiated by the respondent no.2 Divisional Commissioner, by invoking Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 against the petitioner, the impugned order dated 30.03.2015 inflicting penalty upon him was issued by the Chief Executive Officer of the respondent no.1 by invoking powers under the Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1964. Thus, the petitioner clearly suffered prejudice, rendering the entire proceedings vitiated, illegal and liable to be set aside.

18. Apart from this, a perusal of the material on record shows that even on merits, the charges levelled against the petitioner could not be said to have been proved and the impugned orders passed by the respondents were rendered unsustainable. A perusal of the material on record shows that from the very beginning, the petitioner had pointed out that the final distribution of funds to the Gram Panchayats, which was found to be anomalous, was made entirely by the Block Development Officer. As the drawing and disbursing officer, it was the Block Development Officer who made changes in the pattern of distribution and on the said basis, he issued cheques disbursing funds to the various Gram Panchayats. The initial note prepared by the petitioner was placed on record. The petitioner had also made a representation to the respondent no.1 on 20.12.2011 itself, pointing out that he had prepared a note on which the Block Development Officer had made changes by overwriting and that the said officer was illegally pressurizing the petitioner to put his signatures on the same, which he had refused. The petitioner had taken this very stand before the Panchayat Samiti in the general body meeting of 08.12.2011 and he had also placed the copy of his original note before the Panchayat Samiti when asked for an explanation. It is also relevant to note that before the Panchayat Samiti, the Block Development Officer had accepted his mistake which had led to anomalous distribution of funds to the Gram Panchayats.

19. In the enquiry report, the stand of the petitioner regarding his initial note was rejected on the ground that he had failed to produce witnesses in support of his stand. Yet, the crucial document, being the initial note prepared by the petitioner, copy of which was also placed even before the Panchayat Samiti, even before enquiry was initiated against the petitioner, was not given proper attention by the Enquiry Officer, leading to erroneous rejection of the stand of the petitioner. In the face of the material placed on record by the petitioner, the finding in the enquiry report that the petitioner was jointly liable with the Block Development Officer for anomalous distribution of funds to the Gram Panchayats, was absolutely perverse. It was against the material brought on record on behalf of the petitioner. As the findings in the enquiry report against the petitioner were based on erroneous appreciation of the evidence and material on record, they were rendered perverse. As a consequence, the penalties of reduction of two increments with permanent effect and treating the period of suspension as suspension, were also rendered unsustainable. The respondent no.3 Additional

Commissioner, being the authority which decided the appeal, also lost sight of this aspect of the matter while dismissing the appeal filed by the petitioner.

20. The Block Development Officer, being the drawing and disbursing officer, was the only employee who was responsible for distribution of funds to the Gram Panchayats and when there was material to show that he took the decision against the advice and note put up by the petitioner, it was only the Block Development Officer who could have been held responsible for such anomalous distribution of funds to Gram Panchayats. The judgment in the case of The Administrator,

Union Territory of Dadra and Nagar Haveli .vs. Gulabhai M. Lad (supra) sought to be relied upon by the learned counsel for the respondent no.1, in fact, in this context, comes to the aid of the petitioner because it has been held in the said judgment that even in a joint enquiry against co-delinquents , the imposition of penalties/punishment could differ, depending upon the finding as to who could be held squarely responsible for the charges levelled against the delinquents. In the present case, this Court finds that the petitioner could not be held jointly liable for the charges levelled against him and the Block Development Officer, because it was in fact the Block Development Officer who was entirely responsible for the anomalous distribution of funds to the Gram Panchayats. It has also come on record that appeal filed by the Block Development Officer was partly allowed and the penalties imposed against him, which were identical to those imposed against the petitioner, were modified to reduction of only one increment, without any future effect. The facts of the present case show that the respondent no.3 while passing the impugned order as the appellate authority of the petitioner, completely failed to appreciate this aspect of the matter while dismissing the appeal of the petitioner. Thus, it is found that on merits also, the impugned orders passed against the petitioner are unsustainable.

21. As regards the judgments in the case of Balbir Chand .vs. Food Corporation of India Ltd. and A. Sudhakar .vs. Postmaster General, Hyderabad (supra) relied upon by the learned counsel for the respondent no.1, it is found that the judgment in the case of Balbir Chand (supra) pertains to the validity of holding a joint enquiry and the law laid down in the said case would not come to the aid of the respondent no.1 because in the present case even if it was held that joint enquiry was justified, its initiation against the petitioner under the wrong set of rules could not be justified. The learned counsel for the respondent no.1 could not place any authority to show that when joint enquiry is conducted against the two employees, who are covered by two different set of service rules, the service rules applicable to the senior of the two employees, would be applicable to both. As a result, the said judgment in the case of Balbir Chand (supra) is of no help to the respondent no.1. As regards the judgment in the case of A Sudhakar (supra), it is held therein that the employee is required to show that non-observance of a procedure has resulted in denial of justice to him. The ratio of the said judgment would not come to the aid of the respondent no.1 because in the present case,

on both issues regarding application of set of rules and the right of appeal of the petitioner being vitiated, it has been amply demonstrated that such flaws had indeed resulted in denial of justice to the petitioner. Therefore, reliance placed on the said judgments on behalf of the respondent no.1 would be of no avail.

22. In the light of above, it is found that the impugned orders passed by the respondents are wholly unsustainable.

Accordingly, the present writ petition is allowed, impugned order dated 30.03.2015 issued by the respondent no.1 imposing penalties on the petitioner is quashed and set aside and so also the impugned order dated 08.08.2016 passed by the respondent no.3 Additional Commissioner, is also quashed and set aside.

23. Rule made absolute in the aforesaid terms with no order as to costs.