2025:BHC-GOA:748-DB

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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 623 OF 2015

Ashish Deorao Chandekar aged 42 years, resident of Building No.206/2/1 MPT Colony, Headland Sada, Vasco, Goa] **...Petitioner**

Versus

1. Mormugao Port Authority through its Chairman, Headland Sada, Vasco, Goa-403804.]

2. Chief Mechanical Engineer and Disciplinary Authority, Mormugao Port Trust, Headland Sada, Vasco, Goa, 403804.]

3. The Estate Officer, Under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, Mormugao Port Trust, 3rd floor, Administrative Building, Mormugao Port Trust, Headland Sada, Vasco, Goa-403804] **...Respondents**

Mr V. A. Lawande, Mr Atul Sadre and Mr Shivam Gurav, Advocates for the petitioner.

Mr Y. V. Nadkarni, Ms Simran Khadilkar and Mr Nilay Naik, Advocates for the respondents.

CORAM : A.S. CHANDURKAR & NIVEDITA P. MEHTA, JJ.

The date on which the arguments were heard : 19TH MARCH., 2025.

The date on which the Judgment is pronounced : 17TH APRIL, 2025.

JUDGMENT (PER Nivedita P. Mehta , J.)

1. The petitioner has filed the instant Writ Petition assailing the order dated 30.4.2011 passed by the respondent no. 2 removing the petitioner from the service and the orders dated 2.4.2012, 21.5.2013 and 27.1.2015 passed by the Appellate/Reviewing Authority.

2. Succinctly, the petitioner applied for the post of Hindi Translator based on an advertisement issued by respondent no.1 in the year 1998. After the due selection process was concluded, the petitioner was appointed as a Hindi Translator vide order dated 7.5.1998. The petitioner was also given a training course of three months conducted by the Central Translation Bureau, Department of Official Language, Ministry of Home Affairs, Government of India, at Bangalore as the same was made compulsory to get appointment on a regular basis. After completion of the aforesaid translation course, the petitioner was appointed to the post of Hindi Translator on a regular basis with effect from 2.4.1999 and after completion of the probation period the petitioner was confirmed on

8.4.2003. The petitioner at the time of applying for the post of Hindi Translator had submitted his certificates of educational qualification which were duly verified by the respondent No.1.

3. On 29.7.2003, the respondent no. 1 issued a memo asking the petitioner to submit documents of his educational qualification to consider him for the post of Senior Hindi Translator. Accordingly, the petitioner replied to the said memo vide his reply dated 26.8.2003. On 29.9.2003, the respondent no.1 again sought information from the petitioner as regards the University from which the petitioner had completed his graduation and post-graduation from.

4. The respondent no.1 issued a chargesheet dated 2.3.2004 to the petitioner for disobeying the order of the Administration in violation of Mormugao Port Employees (Classification, Control & Appeal), Regulations 1964 (hereinafter referred to as “MPE Regulations, 1964”).

5. During the enquiry in pursuance of the aforesaid chargesheet, the petitioner filed a written explanation on 29.5.2004 informing the respondent No.1 of the University from which the petitioner obtained his graduation and post-graduation degrees. The petitioner informed him that he passed B.A. in 1995 and M.A. in 1997 from the University Bhartiya

Shiksha Parishad, Bharat Bhavan, Matiyari Chinhat, Faizabad Road, Lucknow.

6. The Enquiry Officer submitted a report to the respondent No.2 holding that the charges against the petitioner are proved. The petitioner submitted his written submissions to the Disciplinary Authority, however the same were not accepted and the respondent No.2 issued a memorandum dated 4.5.2005 holding the petitioner guilty of the charges and proposed to impose upon him the penalty of “withholding of two increments of pay with cumulative effect".

7. The petitioner submitted his written submission in response to the proposed penalty but the same was not considered. The penalty of "withholding of two increments of pay with cumulative effect, with effect from 1.2.2006" was passed vide order dated 18.11.2005. The petitioner preferred an appeal against the same before the Appellate Authority as per MPE Regulations, 1964. However, the said appeal was dismissed by the Appellate Authority vide order dated 29.8.2006 and the matter was closed.

8. On 27.5.2005, a second chargesheet was issued to the petitioner on the same subject. The article of charge against the petitioner was that he had submitted a statement dated 29.5.2004 to the Enquiry Officer who

was appointed vide reference dated 25.3.2004, indicating that he completed his graduation, B.A. in the year 1995 and post-graduation, M.A. in the year 1997 at Bhartiya Shiksha Parishad, Bharat Bhavan, Matiyari Chinhat, Faizabad Road, Lucknow whereas in the attestation form duly filled and signed by the petitioner at the time of his appointment, he had declared that B.A and M.A. degree were obtained by him in the years 1995 and 1997 respectively from K.M.V Mahavidyalaya Mul and S.B.O.M Institute, Madras. This was contrary to the statement given to the Enquiry Officer in the earlier enquiry pursuant to the chargesheet dated 2.3.2004. The petitioner filed Writ Petition No.227/2005 challenging the chargesheet dated 27.5.2005 wherein this Court had stayed the aforesaid chargesheet. After two years, the respondent no.1 prayed for vacating the said stay order dated 23.8.2005 by filing Misc. Civil Application no. 642/2007. This Court vide order dated 27.11.2007 directed the respondent no.1 to conduct an enquiry in lieu of chargesheet dated 27.5.2005 within three months and directed that no adverse orders may be passed against the petitioner without prior permission of the Court.

9. The respondent no.1 however sought to withdraw the chargesheet dated 27.5.2005 during the pendency of Writ Petition No.227 of 2005. In view of this development, the said writ petition was disposed of with liberty to the respondent no.1 to issue a fresh chargesheet. After

withdrawing the chargesheet dated 27.5.2005, the respondent no.1 again issued a third chargesheet dated 12.5.2008 on similar charges. In the aforesaid chargesheet, the Article of the charge against the petitioner was that the petitioner had violated Regulations 3(1)(i) and 3(1)(iii) of the MPE Regulations, 1964, alleging that the petitioner made false and misleading statements by giving two different names of the Educational Institutions through which he obtained the same qualifications i.e. B.A. in 1995 and M.A. in 1997 while in Annexure-I of the application form duly signed by the petitioner and submitted while seeking appointment stating that he had obtained his B.A in 1995 and M.A in 1997 through K.M.V Mahavidyalaya Mul, S.B.O.M Institute, Madras. While filing his written explanation before the Enquiry Officer during the earlier enquiry on 25.3.2004, the petitioner had stated that he had obtained his B.A in 1995 and M.A in 1997 through Bhartiya Shiksha Parishad Bharat Bhavan, Matiyari, Chinhat, Faizabad Road, Lucknow. The petitioner on 15.7.2008 and 11.9.2008 requested the respondent No.2 to provide a copy of the application form signed by him and attested by the Plantation Officer as stated in the statement of Articles of Charge to effectively putforth his defence. The respondent No.2 vide order dated 22.9.2008 replied that the Authority was unable to furnish the said document as no such document existed and that the charges were based on the petitioner's Attestation Form. The petitioner filed his reply dated 31.7.2008 denying the charges

levelled against him and stated that in the absence of the aforesaid document, he was not able to place his defence effectively.

10. The respondent no.2 appointed Enquiry Officer Shri S. R. Singbal who conducted the departmental enquiry. During the enquiry process, the Enquiry Officer issued a letter dated 13.1.2009 to the Chairman, Bhartiya Shiksha Parishad Bharat Bhavan, Matiyari, Chinhat, Faizabad Road, Lucknow for verifying the certificates which were issued by the said Institution. The Assistant Director, Bhartiya Shiksha Parishad Bharat Bhavan, Matiyari, Chinhat, Faizabad Road, Lucknow replied vide letter dated 5.12.2009 stating therein that the petitioner has completed B.A and M.A from the Institute in 1995 and 1997 respectively.

11. After the conclusion of the enquiry proceeding, the Enquiry Officer submitted his report dated nil to the respondent no.2 who was the Disciplinary Authority stating therein that charges levelled against the petitioner were not proved. The Disciplinary Authority on 18.3.2011 passed an order stating that he was disagreeing with the findings of the Enquiry Officer and that he had come to the conclusion that the petitioner was guilty of the charge as framed. The petitioner submitted his reply dated 7.4.2011 denying the contentions therein. The Disciplinary Authority without considering the submissions of the petitioner passed an order dated 30.4.2011 overruling the findings of the Enquiry Officer in

referring to Clause 10 sub-clause (iv) of the MPE Regulations, 1964 and awarded the penalty of “Removal from service which shall not be a disqualification for future employment" with immediate effect, in terms of Regulation 9(2)(viii) and 11 of MPE (Classification, Control and Appeal) Regulations 1964.

12. The petitioner filed an appeal before the Appellate Authority Deputy Chairman, Mormugao Port Trust (for short “MPT”) against the order of termination. The said appeal came to be dismissed by the Appellate Authority vide order dated 2.4.2012 without assigning any reasons. Thereafter the petitioner filed a review before the Chairman, MPT and the same was also dismissed vide order dated 21.5.2013. Subsequently, another review application order was preferred by the petitioner before the Ministry of Shipping Government of India and the said review was dismissed as not maintainable. Hence, the present writ petition.

13. The MPT in its affidavit-in-reply stated that the order dated 30.4.2011 awarding the penalty of removal from service was passed after complying with all the necessary procedures and proper application of mind. Hence it was stated that this Court should not interfere with the order in the exercise of extraordinary jurisdiction under Article 226 of the Constitution of India. It was further stated that the order dated 12.4.2012

passed by the Deputy Chairman as Appellate Authority, and the order dated 21.5.2013 passed by the Chairman as Reviewing Authority did not suffer from any infirmities. Moreover, the disciplinary enquiry conducted against the petitioner had culminated in the order dated 30.4.2011. It is further stated that the MPE Regulations, 1964 annexed by the petitioner to the petition was an unamended version of the said 1964 Regulations which had been subsequently amended in the years 1995 and 1997. The amended 1964 Regulations vide Clause 11(26)(i) did not mandate the Disciplinary Authority to call upon the employee to make a representation against the proposed penalty to be awarded. It is also submitted that it was incorrect on the part of the petitioner to allege that the Disciplinary Authority was vested with no power under Regulation 10(iv) to overrule the findings of the Enquiry Officer. The MPT thus stated that the impugned order did not call for any interference by this Court.

14. Mr. V.A. Lawande, the learned counsel on behalf of the petitioner advanced his submissions as given hereunder:

(a) The order dated 30.11.2011 violates Regulation 11(26)(i) of MPE Regulations, 1964. The Disciplinary Authority disagreeing with the report of the enquiry officer asked the petitioner to show cause within 15 days. It was incumbent upon the respondent no. 2 to issue notice to the petitioner by specifically

mentioning the proposed penalty as required under the Regulations.

(b) The action of the Disciplinary Authority terminating the services of the petitioner was based upon a chargesheet dated 12.5.2008. However, on the same issue, earlier charge-sheets dated 2.3.2004 and 27.5.2005 were issued to the petitioner. As far as the matter of the chargesheet dated 2.3.2004 is concerned, a full-fledged enquiry was conducted and the petitioner was punished with withholding of two increments of pay. Furthermore, the chargesheet dated 27.5.2005 was withdrawn by the respondents and therefore, the mode and the manner in which the petitioner was on various occasions charged on the same ground is untenable.

(c) The Disciplinary Authority in violation of principles of natural justice passed the order dated 30.4.2011. The charges framed against the petitioner in the chargesheet dated 12.5.2008 were fully based upon the application form which was submitted by the petitioner to the General Administration Department, MPT, at the time of his appointment and the copy of the same was not furnished to the petitioner despite numerous requests. Therefore, the petitioner was denied a fair and proper hearing.

(d) This Court vide order dated 27.11.2007 had allowed the respondent no.1 to hold an enquiry in pursuance of the chargesheet dated 27.7.2005. The respondent no.1 failed to hold any such enquiry and withdrew the

chargesheet and therefore, the respondents are precluded from issuing a fresh chargesheet dated 12.5.2008 on the same grounds.

(e) The Enquiry Officer exonerated the petitioner and submitted a report to the Disciplinary Authority. The Disciplinary Authority, while disagreeing with the findings of the Enquiry Officer, should have conveyed its tentative findings on the grounds of disagreement and allowed the petitioner to put forth his defence.

(f) The action of the Disciplinary Authority was predetermined and biased. The findings of the Enquiry Officer were overruled in a cryptic manner referring to Clause 10 sub-clause (ii) MPE Regulations, 1964. Moreover, removal from service was illegal as there is no documentary evidence available with the Disciplinary Authority on which the order dated 30.4.2011 had been issued. The Appellate Authority while deciding the appeal of the petitioner was required to pass a speaking order stating the reasons for dismissing the appeal.

(g) The Appellate Authority was required to make sure that the procedure laid down has been complied with by the Disciplinary Authority and findings on record were duly supported to warrant penalty of dismissal.

(h) With regards to the amended Regulation 11 (26) (i), the provision dictates that if a major penalty is imposed in terms of item no.(s) (vi) to (ix) of Regulation 9 of the MPE Regulations, 1964, it is

mandatory to furnish a copy of the record of the Enquiry Officer and where the Disciplinary Authority is different from the Enquiry Officer, a statement as to its findings along with brief reasons for disagreement has to be mentioned. In this case, no such reasons for disagreement with the report of the Enquiry Authority were given by the Disciplinary Authority thus vitiating the entire proceedings.

15. The learned counsel for the petitioner relied upon the following judgments: -

(i) *Punjab National Bank and Others Vs. Kunj Behari Misra, (1998) 7 SCC 84;*
(ii) *Yoginath D. Bagde Vs. State of Maharashtra and Another, (1999) 7 SCC 739;*
(iii) *State of Assam Vs. Mohan Chandra Kanta, AIR 1972 SC 2535;*
(iv) *Aditya Kumar Mishra Vs. State of Uttar Pradesh, Road Transport Corporation through its Managing Director, 2024 SCC OnLine ALL 4699;*
(v) *Krishna Kumar Rao Vs. Haryana Warehousing Corporation, 1994 SCC OnLine P&H 1181;*
(vi) *Dr. M. S. Mudhol and another Vs. S. D. Halegkar and others, (1993) 3 SCC 591;*
(vii) *Vikas Pratap Singh and others Vs. State of Chhattisgarh and others, (2013) 10 S.C.R 1114;*
(viii) *Varindra Hans Vs. Union of India and others in Civil Writ Petition No. 30737 of 2018 of High Court of Punjab and Haryana decided on 31.07.2019;*
(ix) *United Bank of India Vs. Biswanath Bhattacharjee, (2022) 13 SCC 329;*
(x) *Allahabad Bank and others Vs. Krishna Narayan Tiwari, Civil Appeal No. 7600 of 2024 decided on 02.01.2017 by the Hon'ble Supreme Court*

(xi) *Jayantibhai Raojibhai Patel Vs. Municipal Council Narkhed and others, (2019) 17 SCC 184.*

16. Mr. Y. V. Nadkarni, learned counsel on behalf of the respondents made the following submissions:

(a) After the charges were framed against the petitioner under Clause 3(1)(i) and 3(1)(iii) of the MPE Regulations, 1964, an Enquiry Officer was appointed as the petitioner did not admit to the charges. The Enquiry Officer submitted a report holding that the charges levelled against the petitioner were not proved. The report and findings of the Enquiry Officer who disagreed with the report concluded that the charges were proved and called the petitioner to file his explanation within 15 days.

(b) It was only incumbent upon the Disciplinary Authority to give the petitioner an opportunity to be heard and such opportunity was duly given.

(c) Regulation 11(26) (i) of Regulation 1964 does not mandate the Disciplinary Authority to call upon the employee to make a representation against the proposed penalty to be awarded. The petitioner has

relied on the unamended Regulations. The Regulations were amended in the years 1995 and 1997 and in so far as the effect of amended Regulation was concerned, all the requirements therein had been complied with. The Disciplinary Authority was not under an obligation to give detailed reasons as to its dissatisfaction with the findings of the Enquiry Officer. Upon concluding that the petitioner was guilty, the Disciplinary Authority, cited reasons in brief and furnished a copy of the enquiry report to the petitioner and therefore, all the procedural requirements as given under Regulation 11(26) (i) had been complied with.

(d) An earlier charge sheet dated 2.3.2004 was issued to the petitioner on the charge that he was asked by the MPT to furnish his educational qualification certificates to re-verify the same to consider him for the post of Senior Hindi Translator on a regular basis but the petitioner failed to submit the same despite repeated requests made to him and therefore the charge sheet culminated in issuing Order dated 18.11.2005 awarding the penalty.

(e) It is pertinent to note that the Petitioner herein has accepted the said Order dated 18.11.2005 and had not challenged the same.

(f) Subsequently, a charge sheet dated 27.5.2005 was issued to the petitioner on the charge that the petitioner had submitted a statement dated 29.5.2004 to the Enquiry Officer indicating that he has done his Graduation B.A. in 1995 and Post Graduation M.A in the year 1997 at Bhartiya Shiksha Parishad Bharat Bhavan, Matiyari, Chinhat, Faizabad Road, Lucknow whereas in the Attestation Form duly filled and signed by the petitioner and which was submitted to the General Administration Department, MPT at the time of his appointment, he had declared that B.A. and M.A had been done by him in the year 1995 and 1997 respectively at K.M.V. Mahavidyalaya Mul, S.B.O.M. Institute, Madras. This was contrary to the statement given to the Enquiry Officer at the time of enquiry. The Petitioner challenged the said charge sheet dated 27.05.2005 by filing Writ Petition No.227/2005 and this Court vide order dated 23.8.2005 issued a rule and directed that until further orders, proceedings shall

remain stayed of the aforesaid charge sheet. This Court on an application filed by the respondent no.1 vide order dated 23.08.2005 allowed the respondents to proceed with the enquiry but the final order was not be given effect to, if it was adverse to the Petitioner, without prior permission of the Court. The respondent no.1 filed a Misc. Civil Application No.131/2008 in Writ Petition No.227/2005 submitting that they desired to withdraw the charge sheet dated 27.05.2005 with liberty to issue a fresh charge sheet and this Court was pleased to dispose of the Writ Petition No.227/2005 with such liberty.

(g) The respondent no.1 thereafter issued a charge sheet dated 12.5.2008 which ultimately culminated in the passing of the removal Order dated 30.04.2011.

(h) While conducting the whole process of enquiry there was no violation of principles of natural justice. The petitioner was informed that in the list of documents mentioned in Annexure III of the charge sheet dated 12.5.2008 what was indicated was only the attestation form dated 12.11.1997 signed by the petitioner and attested by the Plantation Officer, Forestry Sangli.

According to the respondents, the petitioner was informed that no such document exists and charges were framed on the basis of the attestation form listed in the list of documents. The enquiry was held against the petitioner by the Competent Authority as per the procedure prescribed in law.

(i) The scope of judicial interference in writ jurisdiction against the order of the Disciplinary Authority was limited and the Court cannot act as an appellate forum and look into the findings of the Authority that have been arrived at after a full-fledged enquiry. The case of the petitioner did not warrant interference by the Court under any of the circumstances where such interference has been deemed necessary and proper as per the law as laid down by the Hon'ble Supreme Court.

(j) The petitioner made false undertakings at the time of appointment and therefore the punishment of dismissal was warranted.

(k) With regard to back wages, the petitioner had failed to plead that he was not gainfully employed and was therefore not eligible for back wages under any of the

circumstances that had been culled out by the Hon'ble Supreme Court, where the grant of back wages may be justified.

17. The learned counsel for the respondents relied on the following judgments :

(i) *S. N. Mukherjee Vs. Union of India, (1990) 4 SCC 594;*
(ii) *State Bank of Bikaner & Jaipur and others Vs. Prabhu Dayal Grover, (1995) 6 SCC 279;*
(iii) *State Bank of Karnataka and another Vs. N. Gangaraj, (2020) 3 SCC 423;*
(iv) *State Bank of Karnataka and another Vs. Umesh, (2022) 6 SCC 563;*
(v) *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) and others, (2013) 10 SCC 324;*
(vi) *Maharashtra State Road Transport Corporation Vs. Mahadev Krishna Naik, 2025 SCC OnLine SC 325.*

18. Having heard the learned counsel for the parties and perused the materials available on record, the rival contentions now fall for our consideration.

19. The enquiry report recorded the charges made against the petitioner for violation of Regulation 3(1)(i) and 3(1)(iii) of the MPE

Regulations, 1964 by giving two different names of the Educational Institute from where he received his qualification in B.A. and M.A in two separate communications. In the course of the proceedings four witnesses were examined, however, their statements do not disclose anything of great evidentiary value due to the passage of time since the appointment of the petitioner. The Enquiry Officer concluded that the documents submitted by the petitioner, i.e. the marksheets of his B.A. & M.A had been confirmed with Bharatiya Shiksha Parishad, UP and were deemed to be conclusively authentic. Further, the enquiry report records that the issue raised pertaining to the Bharatiya Shiksha Parishad, UP not being a recognised University was a *sub judice* issue and, therefore, was beyond the scope of this enquiry. It was further stated that, in view of the facts and evidence placed, the petitioner had rightly mentioned the names of the study centres and that there was no contradiction to the information produced by the petitioner in the attestation form with regards to the name of the study centre as well as the name of the university. Hence, the charges levelled against him for giving false, misleading and contradictory statements were not proved.

20. The Enquiry Officer in his inquiry report observed in conclusion as under :-

> "Therefore in conspectus of above facts and evidence placed before me, it is proved that CO has rightly

mentioned the names of study centres i.e. K.M.V. Mahavidyalaya Mul for BA in 1995 and S.B.O.M. Institute, Madras for MA (Hindi) in 1997 in the Sr.No.10 of attestation form (C-34 & 35) and whist mentioning in the explanation dt. 25.3.2004 (C-33) before Inquiry Officer Shri Silvester Correia the name of the University i.e. Bhartiya Shiksha Parishad, Bharat Bhavan, Matlyari, Chinhat, Faizabad Road, Lucknow – 227105 as appearing in the certificates (C-69 & C-70) and marksheets (C-76, C-77, C-78, C-79, C-80). Also there is no contradiction between the information given by CO in the attestation form (C34 & C35) i.e. names of the study centres and the name of university in the explanation (C33) before the Inquiry Officer Shri Silvester Correia, through which the CO acquired his BA & MA (Hindi) qualification, as the information provided by CO as above are independent of each other and true in all respect as regards to names of study centres in attestation form and name of university mentioned in the explanation before Inquiry Officer Shri Silvester Correia. Hence the charges levelled against the CO vide abovementioned Chargesheet of giving false, misleading and contradictory information, as regards the Institution through which he has obtained his educational qualifications i.e. BA & MA (Hindi) are not proved."

21. It is pertinent, at this juncture, to look at the contents of Regulation 11(25) of the MPE Regulations, 1964 which reads as under :

> *"The disciplinary authority shall, if it is not the inquiring authority, consider the record of the inquiry and record its findings on each charge."*

In the present case, the Disciplinary Authority was not the inquiring authority. After considering the enquiry report, the Disciplinary Authority passed an order dated 18.3.2011 which commences as under :

> "Whereas an inquiry was conducted against Shri Ashish D. Chandekar, Hindi Translator, EDP No.154416 of MM Division to inquire into the charge levelled against him vide chargesheet of even reference no.MM/GEN/125/2008/419 dtd. 12.05.2008.
>
> And, whereas the undersigned as Disciplinary Authority having carefully gone through the Inquiry Report (copy attached) disagrees with the findings of the Inquiry Officer, and has come to the conclusion that Shri Ashish D. Chandekar is guilty of the charge against him for the following reasons :
>
> 1. .....
>
> 2. .....
>
> Shri Ashish D. Chandekar is hereby given an opportunity for making a representation on the above. Any such representation which he may wish to make should be submitted in writing to the undersigned, so as to reach not later than 15 days from the date of receipt of order."
>
> (emphasis supplied)

22. Regulation 11(26) of MPE reads thus:

> *"26.(i) If the Disciplinary Authority having regard to its findings on the charge is of the opinion that any of the penalties specified in terms of items (iv) to (ix) of regulation 9 should be imposed, it shall make an order imposing such penalty and shall furnish to the employee a copy of the report of the Inquiry Authority and where the Disciplinary Authority is not the Inquiry Authority, a statement of its findings together with brief reasons for disagreement, if any, with the findings of Inquiry Authority. (emphasis supplied)*
>
> *(ii) In every case in which it is necessary to consult the Board the record of Inquiry shall be forwarded by the Disciplinary Authority along with its recommendations to the Board of passing such orders.*
>
> *Note :*
> *Any disciplinary action which had been taken or is pending or an appeal/review in respect of any disciplinary action has been preferred prior to inclusion of above clause. The same shall be deemed to have been taken or pending or preferred as the case may be under these amended regulations and shall be disposed off in accordance with the provisions of these amended regulations."*

23. The requirement under Regulation 11(25) has not been complied with and therefore it is per se apparent that the Disciplinary Authority has not applied its mind. The Disciplinary Authority while disagreeing with the views of the Enquiry Officer, has breached the principles of natural justice as contrary to Regulation 11(26), the Disciplinary Authority has straightway held that the charges levelled against the petitioner as proved.

The Disciplinary Authority, if it intended to disagree with the findings recorded by the Enquiry Officer ought to have recorded his tentative reasons for disagreement and thereafter should have provided an opportunity to the delinquent employee to represent against the tentative reasons, before recording any findings on the charges. The pre-determined stand of the Disciplinary Authority in concluding that the petitioner was guilty of the charge framed and thereafter calling for further representation on the dissenting note is nothing but an empty formality.

24. In *Kunj Behari Misra (supra),* the Hon'ble Supreme Court held that Article 311(2) of the Constitution of India mandates the Disciplinary Authority to give an opportunity of representation to the charged employee on his findings. While explaining the principles laid down in *Managing Director, ECIL Vs. B Karunakar reported in (1993)4 SCC 727*, on the aspect of complying with the principles of natural justice by furnishing a copy of the enquiry officer's report with an opportunity to the delinquent officer to submit his further representation on the report and in the case of disagreement with the enquiry officers' report, the Hon'ble Supreme Court, at paragraphs 18 and 19 held as follows:

> *"18. Under Regulation 6, the enquiry proceedings can be conducted either e by an enquiry officer or by the disciplinary authority itself. When the enquiry is*

conducted by the enquiry officer, his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with the decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the enquiry officer. Where the disciplinary authority itself holds an enquiry, an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the enquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the enquiry officer, they are deprived of representing to the disciplinary authority before that authority differs with the enquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation, the charged officer must have an opportunity to represent before the disciplinary authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of enquiry as explained in Karunakar case.

19. *The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it*

records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

25. In *Yoginath D. Bagde (supra),* it has been observed that the right of hearing of an employee who is subjected to proceedings conducted by a Disciplinary Authority has to be granted at two stages, first when, the charges are levelled against him, second, when the findings of the enquiry officer are being considered by the Disciplinary Authority. The relevant portion of paragraph 31 has been extracted hereunder for convenience :

"31. *...A delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the enquiry officer into the charges levelled against him but also at the stage at which those findings are considered by the disciplinary authority and the latter,*

namely, the disciplinary authority forms a tentative opinion that it does not agree with the findings recorded by the enquiry officer. If the findings recorded by the enquiry officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the disciplinary authority has proposed to disagree with the findings of the enquiry officer. This is in consonance with the requirement of Article 311(2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry d shall be deemed to be pending. Mere submission of findings to the disciplinary authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the disciplinary authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent up to the final

stage. This right being a constitutional right of the employee cannot be taken away by any legislative enactment or service rule including rules made under Article 309 of the Constitution."

26. The aforementioned extract delineates the two-fold right to be heard of an employee who is subject to proceedings before a Disciplinary Authority. The position adopted by the Hon'ble Supreme Court herein assails any defence that may be sought under the argument that upon the filing of a conclusive report by the enquiry committee, the case of an employee may be laid to rest. It is clear that before the Disciplinary Authority rules on the findings of the enquiry committee, it is mandatory to afford an opportunity to the employee.

27. In the present case, the Disciplinary Authority does not rule on the defence advanced by the petitioner or even record it in its order imposing punishment. The order of the Disciplinary Authority dated 18.03.2011 first records disagreement with the findings of the Enquiry Officer and then concludes that the petitioner is guilty of the charge as framed. It therefore seeks the petitioner's response to the same. This course as followed is contrary to the settled law in this regard.

28. In *Aditya Kumar Mishra (supra),* the High Court of Allahabad has summarised the law laid down by the Hon'ble Supreme Court in a catena of pronouncements as extracted hereunder:

> *"The law regarding judicial review of disciplinary proceedings is well settled. Disciplinary proceedings are quasi-judicial proceedings, and the Inquiry Officer performs a quasi-judicial function. Under Article 226 of the Constitution, the High Court is not a court of appeal over the decision of the disciplinary authority and does not either re-appreciate the evidence submitted against the employee, nor does the High Court record an independent finding on evidence. However, under Article 226 the High Court can interfere where the findings of the disciplinary authority are wholly arbitrary and capricious or are based on no evidence or where the findings are such which no reasonable man can ever arrive at. The findings in the disciplinary proceedings as well as the punishment awarded to the delinquent should also not be influenced by irrelevant considerations. The Inquiry Officer and the disciplinary authority cannot record findings or pass orders of punishment on mere suspicion. The Inquiry Officer and the disciplinary authority can also not travel beyond the charges and any punishment imposed on the basis of a charge which was not the subject matter of the charge sheet would be illegal."*

29. In light of this crystalised position, it is clear that a Court under writ jurisdiction may interfere where the conclusion of the Disciplinary Authority is capricious or wholly arbitrary. In the instant case, the Disciplinary Authority took a divergent position from the one that was recorded by the Enquiry Officer without seeking the petitioner's response on the view proposed to be taken by it. It is our view that such a scenario presents itself as a fit case for the exercise of writ jurisdiction.

30. The learned counsel on behalf of the petitioner has submitted numerous judgments, which in effect are derived from the views pronounced in *Yoginath D. Bagde* (supra) and reiterate the same principle as condensed in *Aditya Kumar Mishra (supra)*. Therefore, we find that the case of the petitioner is covered by the ratio of the aforesaid pronouncements.

31. The respondent has relied on the ruling of the Hon'ble Supreme Court in *S.N. Mukherjee (supra) inter alia*, which opines that the findings of an administrative authority such as a Disciplinary Authority, are not required to be supported by reasons to the same standard as that of the reasoning offered to support the judgment of a court. It is further, considered that the need to record reasons is greatest when it is passed at an original stage and as a sequitur, when an order is passed affirming the findings validated in a previous order, the requirement to elaborate upon

previously affirmed findings is less pressing and a mere statement that the appellate or revisional authority is in consonance of the original order suffices. However, from a reading of the relied-upon portion *(paragraph 36 as reported by SCC)*, the use of the term "separate reason" is pivotal. In our view, while it is true that the same reasons for the original order may not be re-stated, in the instant case, the order of termination records insufficiently substantiated reasons. Therefore, in our view, to be exempted from reproducing the reasoning adopted by the authority that passed the original order is not the same as an exemption from recording a valid set of reasons. It is a well-settled principle of law that orders, regardless of whether passed under quasi-judicial authority or judicial authority, have to be supported by a cogent statement of reasons.

32. In *Prabhu Dayal Grover (supra)*, such exemption from a legal mandate to record reasons is provided for, expressly, by the regulations that the Disciplinary Committee is proceeding under. In this light, the reliance placed on this judgment is misconceived as it does not consider the rider placed by the Hon'ble Supreme Court. The relevant portion is extracted here for convenience:

> *"13. ..It can, therefore, be legitimately inferred that when express provisions have been made in the Regulations for recording reasons in only the first two of three fact situations - and not the other there is no implied*

obligation also to record the reasons in case of concurrence with the findings of the inquiry officer."

33. A bare reading of the extract makes it clear that such exemption from recording reasons has to be in light of a provision in the body of the regulations, and does not, by any means, dictate that as a general principle, a revisional/appellate authority may be exempt for having to record reasons. In the absence of such a provision in the instant factual matrix, we find that the case in hand is distinguishable from the ruling in *Prabhu Dayal Grover (supra)*.

34. In *N. Gangaraj (supra)*, the Hon'ble Supreme Court has opined that the scope of judicial intervention under writ jurisdiction is not the same as an appellate court sitting in re-appreciation of evidence adduced in proceedings of the Disciplinary Authority. In our opinion, considering that a non-speaking order was passed in the present case, the question of re-appreciation of evidence does not arise. The order dated 30.4.2011 was passed without any consideration as to the consequence of any evidence that was adduced during the proceedings of the Disciplinary Authority, therefore this case is distinguishable on facts.

35. In *Umesh (supra),* the Hon'ble Supreme Court opined upon the scope of judicial intervention over the findings of the Disciplinary Authority as thus:

> "*22. In the exercise of judicial review, the Court does not act as an appellate forum over the findings of the disciplinary authority. The court does not re-appreciate the evidence on the basis of which the finding of misconduct has been arrived at in the course of a disciplinary enquiry. The Court in the exercise of judicial review must restrict its review to determine whether:*
>
> *(i) the rules of natural justice have been complied with;*
>
> *(ii) the finding of misconduct is based on some evidence;*
>
> *(iii) the statutory rules governing the conduct of the disciplinary enquiry have been observed; and*
>
> *(iv) whether the findings of the disciplinary authority suffer from perversity; and*
>
> *(v) the penalty is disproportionate to the proven misconduct."*

36. The instant case is squarely covered under clause (iii) of the extracted paragraph, therefore reliance placed on this ruling by the respondents is not apposite.

37. Therefore, in case of disagreement with the Enquiry Officer's report, the substantial compliance of the principles of natural justice

requires that the Disciplinary Authority in case of any disagreement can record only its tentative opinion on the charges with reasons and then issue notice to the delinquent to show cause. The Disciplinary Authority cannot hold him guilty at that stage and thereafter call upon him to make a further representation, which would offend the well-cherished principles of natural justice.

38. The services of the petitioner were terminated by the decision of the Disciplinary Authority after taking a divergent view from the one that had been taken by the Enquiry Officer. We are of the opinion that when a divergent view is taken from the body vested with the task of fact-finding, there is a greater burden placed upon the authority with whom the final decision of imposition of punishment rests to substantiate its premise based upon which such a divergent view may be taken.

39. In the present case, the Disciplinary Authority clearly failed to discharge this burden by not apprising the petitioner of the proposed punishment vide order dated 18.03.2011 which was mandatory in view of Regulation 11(26)(i), by not considering the submissions of the petitioner in the body of the order dated 30.4.2011 and by not furnishing a copy to the petitioner of the application form which was submitted by the petitioner to the General Administration Department, MPT, at the time of

his appointment. On these counts, the order of punishment is liable to be interfered with as it has been passed in a manner contrary to law.

40. As far as the submission pertaining to remit the matter for fresh consideration by the Disciplinary Authority is concerned, we are not inclined to do so due to the length of time that has passed since the conclusion of the enquiry. Prejudice to the rights of the petitioner caused due to the disciplinary proceedings is apparent on the face of the record. In the facts and circumstances of this case, by remitting the matter to the Disciplinary Authority, his agony will be only prolonged. The petitioner was first issued a memorandum in the same matter on 29.7.2003. Despite grant of liberty to proceed with the enquiry afresh, the same has been conducted in breach of principles of justice. The facts of the present case do not call for an order of remand again. Justice should not only be done but should manifestly seem to be done.

41. In light of the aforementioned discussion, it can be culled out clearly that the basis for imposing such punishment upon the petitioner is both in violation of the procedural mandate of the MPE Regulations, 1964 and of the principles of natural justice. Furthermore, prior to the chargesheet that culminated in an order of termination being issued, two chargesheets had been issued against the petitioner on two separate

occasions for the same purported misconduct; it is clear that the petitioner has been victimised by the respondents.

42. Coming to the aspect of consequential relief, it is clear that on the order of punishment being set aside, the petitioner is entitled to be reinstated on his former post with continuity. As regards the grant of back-wages is concerned, the petitioner in paragraph 40 of the Writ Petition has pleaded that after his services were illegally terminated, he was rendered jobless. He has stated that he was the only bread earner in his family. These averments of the petitioner have not been countered by the respondents. There is no denial on the part of the respondents.

In our view, in the absence of any denial of the petitioner's stand that he was jobless after the termination of his services, the petitioner is entitled to relief in that regard. In the case of *Mahaedeo Krishna Naik (supra),* the Hon'ble Supreme Court after referring to the decision in *Deepali Gundu Surwase (supra)* has opined that:

> "*There is one other aspect that would fall for consideration of the court. In certain decisions, noticed in Deepali Gundu Surwase (supra), it has been opined that whether or not an employee has been gainfully employed is within his special knowledge and having regard to Section 106 of the Evidence Act, 1872, the burden of proof is on him. What's required of an*

employee in such a case? He has to plead in his statement of claim or any subsequent pleading before the industrial tribunal/labour court that he has not been gainfully employed and that the award of reinstatement may also grant him back wages. If the employee pleads that he was not gainfully employed, he cannot possibly prove such negative fact by adducing positive evidence. In the absence of any contra-material on record, his version has to be accepted. Reference in this connection may be made to Section 17-B of the Industrial Disputes Act, 1947, which confers a right on an employee to seek "full wages last drawn" from the employer while the challenge of the employer to an award directing reinstatement in a higher court remains pending. There too, what is required is a statement on affidavit regarding non-employment and with such a statement on record, the ball is in the court of the employer to satisfy the court why relief under such section ought not to be granted by invoking the proviso to the section. We see no reason why a similar approach may not be adopted. After the employee pleads his non-employment and if the employer asserts that the employee was gainfully employed between the dates of termination and proposed reinstatement, the onus of proof would shift to the employer to prove such assertion having regard to the cardinal principle that 'he who asserts must prove'. Law, though, seems to be well settled that if the employer by reason of its illegal act deprives any of its employees from discharging his work and the

termination is ultimately held to be bad in law, such employee has a legitimate and valid claim to be restored with all that he would have received but for being illegally kept away from work. This is based on the principle that although the employee was willing to perform work, it was the employer who did not accept work from him and, therefore, if the employer's action is held to be illegal and bad, such employer cannot escape from suffering the consequences. However, it is elementary but requires to be restated that while grant of full back wages is the normal rule, an exceptional case with sufficient proof has to be set up by the employer to escape the burden of bearing back wages." (emphasis placed)

The clear upshot of the aforesaid extract is that the onus of proving whether the terminated employee is presently employed is incumbent upon the employer since it is observed that it would be a fallacious endeavor to seek positive evidence of a negative fact. Therefore, this ruling ultimately supports the claim of the petitioner to back wages and the reliance placed by the respondent in this regard is unacceptable.

43. Thus, taking an overall view of the matter including the fact that the order of termination has been set aside on the ground of breach of principles of justice, we are inclined to award 50% back-wages to the petitioner from 1.5.2011 till his reinstatement.

It is to be noted that after the services of the petitioner were terminated on 30.4.2011, proceedings for his eviction under Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 were initiated. On 20.3.2015 the Estate Officer issued a show cause notice to the petitioner calling upon him to pay damages for unauthorised occupation of the premises owned by MPT. By the order dated 30.9.2015 passed in the Writ Petition, the undertaking furnished by the petitioner was accepted and he was permitted to vacate the premises on or before 31.12.2015. The recovery of the amount of damages was deferred till the final hearing of the Writ Petition. Since the order of termination of the petitioner's service has been found to be illegal, the petitioner's occupation of the premises owned by the MPT cannot be treated to be illegal. Hence, there would be no question of recovering the amount of damages from the petitioner. The show cause notice dated 20.3.2015 stands clarified accordingly.

44. Hence, for the aforesaid reasons, the following order is passed :-

(a) The Order dated 30.04.2011 is untenable in the eyes of the law and therefore liable to be quashed and set aside. As a natural consequence, the orders dated 2.4.2012, 21.5.2013 and 27.1.2015 passed by the

Appellate/Reviewing Authorities are also hereby quashed and set aside. The petitioner shall be reinstated on his former post with continuity in service.

(b) The petitioner is held entitled to 50% back-wages from 1.5.2011 till his reinstatement.

(c) No further steps shall be taken pursuant to show cause notice dated 20.3.2015 against the petitioner.

(d) The writ petition is allowed with no order as to costs. Rule is made absolute.

(NIVEDITA P. MEHTA, J.) (A. S. CHANDURKAR, J.)

45. At this stage, Mr N. Naik, learned counsel for the respondents seeks stay of the order for a period of twelve weeks in order to challenge the same.

46. Mr Lawande, learned counsel appearing for the petitioner opposes the request on the ground that the petitioner is suffering for last many years.

47. In the facts of the present case, the judgment shall operate after a period of four weeks from today.

(NIVEDITA P. MEHTA, J.) **(A. S. CHANDURKAR, J.)**