



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

WRIT PETITION NO. 2824 OF 2004

Purushottam S/o Bhaurao Dabhekar,
Aged about 34 years, Occup-Nil.
R/o. Gandhi Ward, Chimur,
District – Chandrapur.

.....**PETITIONER**

...V E R S U S...

1] The Divisional Commissioner,
Nagpur Region, Nagpur.

2] The Chief Executive Officer,
Zilla Parishad, Chandrapur.

3] The Block Development Officer,
Panchayat Samiti, Chimur.

..... **RESPONDENTS.**

Shri Sandeep Marathe, Advocate for the Petitioner.
Shri A. R. Chutke, AGP for Respondent No.1.
Shri M. V. Mohokar, Advocate for the Respondent Nos.2 and 3.

CORAM : **S. C. GUPTE, J.**

DATE : **10th AUGUST, 2017.**

ORAL JUDGMENT :

Heard learned counsel for the parties.

02] This petition challenges a disciplinary action of

compulsory retirement taken by the Chief Executive Officer of Zilla Parishad, Chandrapur against the petitioner, who was working as a tracer in Panchayat Samiti, Chimur.

03] The charge against the petitioner was that whilst the receipt and disposal of cement at the Godown of Panchayat Samiti, Chimur was entrusted with the petitioner, upon stock taken on 7th May, 2002 and 8th May, 2002, the quantity of cement was found to be less by 30 bags. According to the stock book as of 7th May, 2002, there was stock of 2465 bags of cement at Panchayat Samiti, Chimur but on physical counting of the stock only 2435 bags of cement were found. The explanation furnished by the petitioner, in this behalf, was found to be unacceptable, indicating misappropriation of cement bags. The second charge was that on 18th April, 2002 there was an entry of allotment of 200 bags of cement to Secretary, Gram Panchayat, Chimur but there was no signature of the recipient on the receipt. So also, on the same day, there was another entry of allotment of 100 bags of cement to the Secretary, Gram Panchayat, Khadsangi -Sonegaon (Forest) but even here there was no signature of the recipient. Gram Panchayat, Chimur had given a statement that they had received

196 bags as against 200 bags of cement said to have been allotted to them, whereas Gram Panchayat, Khadsangi – Sonegaon (Forest) had indicated that they had received only 95 out of 100 bags of cement said to have been delivered to them. Accordingly, there was deficiency of 14 cement bags. The third charge was a combination of the first two charges, namely, for recovery 44 bags of cement at twice the market rate. The fourth charge was insubordination offered to Superior Officers. It was claimed that though the petitioner was instructed clearly that cement issued to any Gram Panchayat was to be delivered to the Secretary of the Gram Panchayat, 50 bags of cement were issued to Gram Panchayat, Hiwra without taking the signature of its Secretary and taking simply a thumb impression of the recipient. A charge-sheet was duly issued in this behalf by the Chief Executive Officer. In pursuance of the charge-sheet, an enquiry was conducted by the Special Enquiry Officer, namely, Assistant Commissioner (Enquiry), Nagpur Division, Nagpur. Nine witnesses were examined on behalf of the Zilla Parishad. The written statement/deposition of the petitioner recorded before the Executive Engineer was also taken into account. The enquiry officer, after taking into account the charges, the explanation of the delinquent employee and the

evidence led before him, held the charge of misappropriation of 30 bags of cement as also deficiency in issue of cement by 14 bags as proved. Since the third charge was based on a combination of the first two charges, it was also held to be proved. As far as, the incident concerning Gram Panchayat, Hiwra was concerned (part of the fourth charge), the enquiry officer held that it was not possible to draw any inference in this behalf. Based on the report of the enquiry officer, a show cause notice was issued by the Chief Executive Officer of the Zilla Parishad to the petitioner for disciplinary action on the ground of proven charges. After considering the explanation of the petitioner, the Chief Executive Officer awarded the punishment of compulsory retirement. This order was carried in appeal by the petitioner before the Divisional Commissioner, Nagpur. The Divisional Commissioner by his order dated 17th February, 2004 rejected the appeal. Hence, the present petition.

04] Learned counsel for the petitioner made the following submissions :

- (i) Learned counsel submits that the charge-sheet issued to the petitioner itself indicates that the Disciplinary

Authority had already made up its mind on the proof of the charges and that the charge-sheet exhibits bias, since the Disciplinary Authority had already made up its mind. Learned counsel relies on the Hon'ble Supreme Court's decision in the case of **State of Punjab..vs..V.K.Khanna and Others, reported in (2001) 2 Supreme Court Cases 330**, in support of his submission.

- (ii) Learned counsel also submits that the petitioner's written statement was recorded before another officer of the respondents, namely, Executive Engineer and not before the Chief Executive officer, who is the Disciplinary Authority.
- (iii) Learned counsel submits that the conclusion drawn by the enquiry officer is contrary to the material available before him including the explanation tendered by the petitioner.
- (iv) Learned counsel submits that the punishment awarded to the petitioner is disproportionate to the misconduct purportedly proved against him.

05] As far as the issue of pre-determination of mind or bias is concerned, the charge-sheet merely indicates that a preliminary enquiry made by the authority indicated the factum of misappropriation. Though the words used are suggestive of a proof of misappropriation, this was only a tentative finding so as to frame a charge and not to award the punishment. Besides, the matter of

enquiry is entrusted to an independent officer, who was expected to go through the charge, the explanation of the delinquent and the material produced by the employer as well as delinquent employee in support or defence of the case and then arrive at findings of fact. The enquiry officer has evidently offered full opportunity to the petitioner to adduce material, to cross-examine the witnesses of the Zilla Parishad and to make his own submissions. The enquiry officer arrived at his findings of proven misconduct only after this exercise. The objection to the punishment on the basis of a pre-determined mind or bias, thus, holds no water.

06] The judgment of the Hon'ble Supreme Court in **V. K. Khanna's** case is on an entirely different footing. That was a case, where after the charge-sheet was issued to the Principal Secretary of the Chief Minister but before even a reply could be received from the Principal Secretary, a press statement was issued by the Chief Minister indicating his proposal to appoint a High Court Judge for looking into the charges. The Court held that this disclosed a closed mindset and not a free and fair attitude towards the officer concerned. The Court held that it was well settled in service jurisprudence that the authority concerned has to apply its

mind upon receipt of a reply to the charge-sheet or show-cause notice, as the case may be, as to whether a further enquiry is called for; only then would an enquiry follow but not otherwise. The observations of the Supreme Court in para nos.33 and 34 concerning bias are in this context. After examining the record of the case, the Hon'ble Supreme Court came to a positive conclusion that announcement of the Chief Minister in regard to appointment of an enquiry officer exhibited a pre-determined frame of mind of the authorities and depicted bias. These observations have no bearing on the present controversy. Here the only allegation is that by reason of the language used in the charge-sheet, the charges are said to be effectively proved even before the enquiry. As I have noted above, there is no substance in that allegation.

07] As regards the contention that the written statement/deposition was recorded before another officer, that is to say, before an officer other than the disciplinary authority, the identity of the officer before whom the written statement is recorded is immaterial. The important point is the identity of the authority or tribunal before whom such written statement is read in defence of charges. The written statement was obviously presented

to an enquiry officer, who was an independent officer, being the Assistant Commissioner (Enquiry), Nagpur Division, Nagpur. It is not the case of the petitioner that the statement was either wrongly recorded or did not reflect the petitioner's case. If everything that the petitioner proposed to say in defence of the charges is contained in the written statement and such written statement is produced before and read by an independent enquiry officer and deliberated upon, there cannot be any failure of natural justice. It is not a case where the delinquent is denied opportunity to show cause.

08] On the merits of the explanation, it is pertinent to note that what was found by the enquiry officer was that instead of 2465 bags of cement, which ought to have been stored at the Godown of Panchayat Samiti, Chimur as of 7th May, 2002, the actual stock was found less by 30 bags; only 2435 bags of cement were found at the Godown. This fact is not contested by the petitioner. The petitioner seeks to explain this fact by submitting that on 23rd March, 2002, a truck containing 340 bags of cement came for unloading at the Godown of Panchayat Samiti, Chimur, but since there was no space for the stock of 340 bags of cement,

the truck was dispatched to Gram Panchayat, Neri which had requirement of about 300 bags, and that this accounted for the deficiency in the stock noted at Chimur. This explanation did not find favour with the enquiry officer and the reasons are not far to seek. The alleged incident of inadequacy of space for storage at Chimur and diversion of the truck containing 340 bags of cement to Neri is supposed to have happened on 23rd March, 2002, that is to say, much before the stock taking of 7th May, 2002. The case of the Zilla Parishad is that whereas the stock at Chimur as of 7th May, 2002 was to be 2465 bags, actual stock noticed was 2435 bags. This was in accordance with the stock book maintained at Chimur, wherein the stock entries were in accordance with physical stock verified at Chimur. The physical verification itself is not contested by the petitioner. If that is so, then it implies that there was as of 7th May, 2002 an entry of physical stock at Chimur of 2465 bags of cement. As against this, the actually verified quantity, i.e. the stock actually noticed as of 7th & 8th May 2002, was 2435 bags. Once again, the physical assessment of the stock is not a matter of contest. (Though the petitioner contests the presence of the agriculture officer, Mr. D. T. Suphale, on 8th May, 2002, on account of duties assigned to him at Chandrapur on that day, this does not

raise a serious cloud of suspicion over the actual verification of the stock. Besides, the quantity verified in stock is not contested as noted above.) If, in the face of these facts, the enquiry officer does not accept the petitioner's explanation and holds him responsible for 30 missing bags, it certainly cannot be said that the conclusion drawn by the enquiry officer is in any way perverse. Perversity which a writ court is concerned with in the case of a challenge to a domestic inquiry or its findings is perversity as understood by the Wednesbury Principle. If the conclusion of the enquiry officer cannot be said to be one based on no evidence or which is arrived at after taking into account non-germane or irrelevant material or by disregarding relevant and germane material, there is no case for interfering with it. Neither of these ingredients is satisfied in the present case. Thus, the conclusion drawn by the enquiry officer, and acted upon by the disciplinary authority in the present case, cannot be said to warrant any interference within the framework of Articles 226 and 227 of the Constitution of India.

09] Coming now to the so-called disproportionate punishment, it is to be noted that here is a case of an employee, who was trusted with proper maintenance and issue of stocks and

thus held an office of confidence and who is guilty of misappropriation of stock – and not just in one case but in a number of cases, including cases where receipts were obtained from recipients for larger quantities as against lesser actual quantities delivered. It is by all means a serious misconduct, which undermines the very confidence of the appointing authority and renders the holder of the office unfit of such confidence. In that sense, the punishment meted out here, namely, compulsory retirement, is indeed disproportionate, though such disproportionateness weighs rather in favour of the petitioner than the disciplinary authority. There is, accordingly, no merit even in this submission.

10] There is no infirmity, accordingly, with the appellate order of the Divisional Commissioner.

11] For the reasons discussed above, there is clearly no merit in the Writ Petition. Rule is, in the premises, discharged and the Writ Petition is dismissed. No order as to costs.

JUDGE

PBP