

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10979 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

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RN SONI

Versus

DIRECTOR, INDIAN MEDICAL SERVICES AND HOMEOPATHY

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Appearance:

1. Special Civil Application No. 10979 of 1994  
MS SONAL SHAH FOR MR YN OZA for Petitioner.  
MR HASIT DAVE, AGP for Respondent No. 1

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CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 28/10/2004

ORAL JUDGEMENT

The petitioner has filed this petition under Article 226 and 227 of the Constitution of India seeking direction to quash and set aside the order dated

25.06.1991 passed by the respondents and the order dated 01.08.1994 passed by the Gujarat Civil Services Tribunal.

2. It is the case of the petitioner that the petitioner was serving as Head Clerk - Cum - Accountant. The petitioner was serving with a Charge-sheet dated 14.10.1986 and before the said Charge-sheet was served, he was suspended on 05.07.1985 from services. Thereafter, a departmental inquiry was conducted against the petitioner and after completion of the departmental inquiry, an order of punishment reverting the petitioner to the post of Senior Clerk or its equivalent post in the pay scale of Rs. 1200 - 2040 for one year was passed. The petitioner has challenged the said order before the Gujarat Civil Services Tribunal and the Tribunal rejected the appeal filed by the petitioner. However, while rejecting the said appeal, the Tribunal has enhanced the punishment from reversion to the post of Senior Clerk for one year to five years.

2. Being aggrieved by the said order, the petitioner has filed the present petition before this Court.

3. Ms. Sonal Shah, learned advocate appearing for Mr. Y.N. Oza for the petitioner has submitted that the Tribunal has exceeded its jurisdiction while enhancing the quantum of punishment as the Tribunal has no power to enhance the punishment. For this purpose, she has invited the attention of the Court to the Provisions contained in Rule 18 of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971. Rule 18 provides for appeals against the order passed by the Disciplinary Authority. Several circumstances have been enumerated in the said rule and being aggrieved by the order passed by the Disciplinary Authority, the petitioner has preferred this appeal. The respondent has not filed any appeal against the order of the Disciplinary Authority and in the appeal filed by the petitioner, the Tribunal has enhanced the punishment by invoking the provisions contained in Rule 21(2)(d). She has further submitted that Rule 21(2)(d) is not applicable to the facts of the present case. It is the submission of Ms. Shah that Rule 21(2) can be invoked only in the case when the respondent authority has also filed an appeal. It states that in the case of an appeal filed against an order imposing any of the penalties specified in Rule 6, or enhancing any penalty imposed in the said Rule, the appellate authority shall consider whether the penalty imposed is excessive, adequate or inadequate, and, after consultation with the Commission, if such consultation is necessary in the case, pass orders setting aside,

reducing, confirming or enhancing the penalty. So far as the petitioner's case is concerned, since there was no appeal filed by the respondent authority, the Tribunal has no power or jurisdiction to enhance the penalty.

4. In support of her submission, she relied on the decision of the Hon'ble Supreme Court in the case of MAKESHWAR NATH SRIVASTAVA V/S. THE STATE OF BIHAR AND OTHERS, 1971 (1) S.C.C. 662 wherein the question arose before the Hon'ble Supreme Court was as to whether it was competent for the Government, in an appeal filed by the appellant against the order of reversion passed against him by the I.G. Police, to set aside the findings of that Officer by which he exonerated the appellant from the said charge against him, which findings are not appealed against by the department, and then pass an order of dismissal accepting the findings of the enquiry officer. While considering this question, the Hon'ble Supreme Court has held that the State Government cannot interfere under the purported exercise of the general power of superintendence under Section 3, with an order passed by any one of the officers mentioned in Section 7 in exercise of the power conferred on them by that section, unless there is some provision which authorises or envisages such interference. The Hon'ble Supreme Court has further held that since under Rule 851 (b) an appeal to the Government has been provided for and the Government is under that rule the appellate authority to dispose of appeals filed before it against the original order passed by the Inspector General, it could not resort to any general power in addition to its appellate authority and in the manner envisaged by such provision. In the facts of that case, the Hon'ble Supreme Court has further observed that Rule 853-A cannot be operative because it has not been published in the Official Gazette as required by Section 46 (2). On the basis of the aforesaid judgment, Ms. Shah has submitted that the said judgment is squarely applicable to the facts of the present case as the respondent authority has not preferred any appeal before the Tribunal and in the appeal filed by the petitioner, the Tribunal has no power or authority to enhance the penalty. She has, therefore, submitted that the order of enhancement of penalty passed by the Tribunal is contrary to the provisions of the Act and against the binding decision of the Hon'ble Supreme Court and, therefore, the said order is required to be quashed and set aside.

5. Ms. Sonal Shah has requested the Court that she is not in a position to contact her client and is not aware about the present position of the petitioner as to

whether he is in the service or the order passed by the Tribunal is complied with or not.

6. Mr. Hasit Dave, learned A.G.P. appearing for the respondents has submitted that the Tribunal has at length considered the orders passed by the Inquiry Officer as well as the Disciplinary Authority. He has further submitted that though the Disciplinary Authority has agreed with the finding given by the Inquiry Officer and the charges levelled against the petitioner were partly proved, the penalty imposed by the Disciplinary Authority is much less looking to the gravity of the offence. The charges levelled against the petitioner are of very serious nature and they are of in the nature of misappropriation of Government fund as well as playing mischief with the records and misleading the superior authorities. The Tribunal has rightly considered the gravity of these offences and enhanced the penalty by reverting the petitioner to the post of Senior Clerk or such equivalent post for five years instead of one year. As far as the powers of the Tribunal are concerned, he has submitted that Rule 21(2)(d) specifically empowers the Tribunal that in an appeal filed before it, the Tribunal can either reverse, set aside or enhance the penalty imposed by the Disciplinary Authority. He has, therefore, submitted that no interference is called for by this Court while exercising power under Article 226 & 227 of the Constitution of India. The judgment of the Hon'ble Supreme Court (Supra) relied on by the petitioner has no application to the facts of the present case as in that case, the analogous provision with regard to enhancement was not there in Rule 851 (b) of the Rules in question. In absence of any specific power for enhancement, the Court has taken that view and hence, the said decision is not applicable.

7. After having heard learned advocate Ms. Sonal Shah appearing for the petitioner and learned A.G.P. Mr. Hasit Dave appearing for the respondent and after having gone through the orders passed by the Disciplinary Authority as well as the Tribunal, this Court is of the view that though there is a specific finding to the effect that the charges levelled against the petitioner are partly proved and since the charges are of very serious nature, penalty imposed by the Disciplinary Authority does not commensurate with the charges levelled and partly proved against him. The Tribunal has, therefore, rightly interfered with the order passed by the Disciplinary Authority. Proper opportunity is given by the Tribunal before passing the order of enhancement. Even before the Tribunal also, the petitioner has not

placed any material or offered any explanation so as to convince the Tribunal not to exercise the powers regarding enhancement. On the other hand, the petitioner has only prayed for the mercy before the Tribunal and on compassionate ground, lesser punishment was prayed for. The Tribunal has rightly observed that since the petitioner was on responsible post and by misusing his position, he has misappropriated the amount and misled the superior authority for his own benefit. In such a situation, the order passed by the Tribunal reverting the petitioner for five years instead of one year cannot be said to be an order without jurisdiction or in any way unjust or improper. The decision relied on by the learned advocate appearing for the petitioner is not applicable to the facts of the present case as in the present case, specific powers are conferred on the Tribunal for enhancement of the penalty and simply because the respondent authority has not filed any appeal against the order of the Disciplinary Authority, the Tribunal is not restrained from exercising its power of enhancement in an appeal filed by the petitioner against the order of the Disciplinary Authority. If no such appeal were filed, the Tribunal would have exercised its powers regarding review under Rule 22 of the Rules.

8. Considering the entire facts and circumstances of the case and looking to the relevant provisions contained in the Rules, this Court is of the view that the order passed by the Tribunal does not call for any interference while exercising the power under Article 226 & 227 of the Constitution of India. The petition is, therefore, dismissed. Rule discharged without any order as to costs.

[K.A. PUJ, J.]

#Savariya#

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