

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 180 OF 2021  
(Subject:-Minor Punishment & Recovery)**

**DISTRICT: - AHMEDNAGAR**

**Chandrashekhar S/o Suresh Kulthe,** )  
Age: 46 yrs, Occu: Service as Awwal Karkoon) )  
C/o. Tahsil Office, Rahata, Tq. Rahata, ) )  
District Ahmednagar. ) )  
R/o: Shree Complex, Joshi Nagar, ) )  
Dharangaon Road, Kopargaon, ) )  
Tq. Kopargaon. Dist. Ahmednagar. ) )  
Mob. No. 7219575659. ) **...APPLICANT**

**V E R S U S**

- 1. The Divisional Commissioner,** )  
Nasik Division, Central Administrative )  
Building, Nasik Road, District Nasik. )
- 2. The Director Collector (Revenue),** )  
**Ahmednagar,**G.P.O. Road, Hatampura) )  
Collector Office, Ahmednagar, ) )  
Dist. Ahmednagar. ) )
- 3. The Tahsildar,** )  
Tahsil Office, Jamkhed, ) )  
Tq. Jamkhed, Dist. Ahmednagar. ) )
- 4. District Supply Officer, Ahmednagar,) )**  
G.P.O. Road, Hatampura, ) )  
Collector Office, Ahmednagar, ) )  
Dist. Ahmednagar. ) **...RESPONDENTS**

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**APPEARANCE** : Shri V.B. Wagh, learned Advocate  
for the applicant.

: Shri S.K. Shirse, learned Presenting  
Officer for the respondents.

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**CORAM** : **SHRI V.D. DONGRE, MEMBER (J)**  
**DATE** : **21.02.2023.**  
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**ORDER**

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, this Original Application is filed challenging the impugned punishment order dated 26.08.2019 (Annexure 'A-6') directing to recover an amount of Rs. 6,46,723/- from the applicant towards the loss caused to the Government and withholding two annual increments permanently and also challenging the order dated 21.12.2020 (Annexure 'A-8') issued by the respondent No.1 in departmental appeal No. 23/2019 and order dated 23.09.2015 (Annexure 'A-11') (wrongly mentioned in prayer as dated 15.11.2010) issued by the respondent No. 2 rejecting the departmental appeal No. 01/2011 by the respondent No.2 against the applicant.

2. The facts in brief giving rise to this Original Application can be summarized as follows:-

(i) The applicant is presently working as Awwal Karkoon at Tahsil Office, Rahata since 28.01.2021. He was initially

appointed as Clerk vide order dated 09.06.1999. During the period of April 2005 to March 2006, the applicant was posted as Godown Keeper, Jamkhed and thereafter he was transferred therefrom.

(ii) While working as Godown Keeper, the respondent authorities issued memorandum of charge sheet dated 25.05.2007 (Annexure 'A-1') to the applicant thereby alleging loss caused to the Government on account of irregularities committed by him while working as Godown Keeper during the period of 20.04.2000 (wrongly mentioned as 20.04.2002) to 14.12.2005 at Jamkhed. The applicant submitted his written statement dated 18.06.2007 (Annexure 'A-2') and denied the allegations levelled against him. The said written statement was not considered by the respondent authorities and Enquiry officer and Presenting Officer were appointed on 31.08.2007 to make enquiry against the applicant. The enquiry was conducted as per Rule 8 of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. The enquiry officer submitted his report dated 24.02.2015 (Annexure 'A-3') after completion of the said enquiry.

(iii) Upon receipt of the said enquiry report, the respondent No.4 i.e. the District Supply Officer, Ahmednagar addressed

letter dated 28.02.2017 (Annexure 'A-4') to the respondent No.2 i.e. District Collector (Revenue) Ahmednagar and recommended withholding of one annual increment considering that charges were partly proved against the applicant. Thereafter, the respondent No.2 issued final show cause notice dated 13.11.2018 (part of Annexure 'A-5' collectively) to the applicant as to why two annual increments permanently should not be withheld. The applicant submitted his reply dated 28.12.2018 (part of Annexure 'A-5' collectively) to the said show cause notice. The respondent No.2 after receipt of the said reply imposed punishment vide its impugned order dated 26.08.2019 (Annexure 'A-6') to the effect of recovery of an amount of Rs. 6,46,723/- and withholding of two annual increments permanently.

(iv) The applicant preferred departmental appeal against the said order dated 26.08.2019 before the respondent No.1 by presenting appeal No. 23/2019 dated 17.09.2019 (Annexure 'A-7'). The respondent No.1, however, rejected the said appeal vide impugned order dated 21.12.2020 (Annexure 'A-8') without considering the contention raised by the applicant in appeal memo.

(v) Prior to initiation of departmental enquiry, the respondent No.3 i.e. the Tahsildar, Jamkhed had issued an order dated 25.10.2010 (Annexure 'A-9') wherein without any consideration or without giving any opportunity to the applicant directed thereby to District Supply Officer to recover an amount of Rs. 6, 46, 723/- towards the loss of food grains due to alleged negligence in duty. Against that order, the applicant preferred appeal No. 01/2011 dated 15.11.2010 (Annexure 'A-10') before the respondent No.2 i.e. the District Collector (Revenue), Ahmednagar. The respondent No.2 without following the procedure laid down in the Godown Manual and the guidelines prescribed by Food and Supply Department, rejected the said appeal No. 1 /2011 vide its order dated 23.09.2015 (Annexure 'A-11'), which is also impugned in this application.

(vi) It is submitted that while passing the abovesaid orders, the respondent Nos. 1 to 4 have totally lost their site in respect of the procedure which has been laid down in the Godown Manual as well as the guidelines laid down in G.R. dated 01.04.2008 and Government Circular dated 19.07.1961. Annexure 'A-12' collectively are relevant portion

of Godown Manual and Government Circular dated 19.07.1961.

(vi) It is further submitted that the enquiry officer in his enquiry report has stated that the respondent No.3 i.e. the Tahsildar and the respondent No.4 i.e. the District Supply Officer, Ahmednagar were also responsible for the alleged loss and were liable for misconduct. However, no action is initiated against them. In the circumstances, the impugned order of punishment of recovery and withholding of two annual increments permanently are disproportionate to the allegation levelled against the applicant. Hence this application.

3. The Original Application is resisted by filing affidavit in reply of respondent Nos. 1 & 2 (page No. 174 to 182) to which the applicant filed affidavit in rejoinder (page No. 183 to 187) and also filed short affidavit (page No. 188 to 215).

4. It is the contention of the respondents in the affidavit in reply that the applicant has committed misconduct while he was posted as Godown Keeper at Jamkhed and due to his negligence in duty, the Government suffered loss of Rs. 6,46,

723/- towards shortage of food grains in the government godown.

5. The departmental enquiry was initiated against the applicant in accordance with law as the explanation given by the applicant to the show cause notice was not satisfactory. The enquiry officer has given finding that charges are proved against the applicant. Considering that, punishment of stoppage of two annual increments permanently and recovery of an amount of Rs. 6,46,723/- was rightly imposed which is commensurate with the misconduct committed by the applicant. The Original Application is devoid of merit and liable to be dismissed.

6. The applicant filed his affidavit in rejoinder and short affidavit and contended that the recovery is ordered against the applicant without considering the defence raised by the applicant on the basis of provisions in the Godown Manual. It is reiterated that the enquiry officer has held the Tahsildar, Jamkhed and District Supply Officer, Ahmednagar responsible. However, the applicant is only signed out and is being discriminated by awarding punishment though the charges were not fully proved against the applicant.

7. I have heard at length the arguments advanced by Shri V.B. Wagh, learned Advocate for the applicant on one hand and Shri S.K. Shirse, learned Presenting Officer for the respondents on other hand.

8. After having considered the pleadings and documents placed on record by the applicant and reply of the respondents, it is seen that departmental enquiry was initiated against the applicant in accordance with law. In the said departmental enquiry witnesses were examined and documents were also produced. The applicant participated in the said departmental enquiry. The departmental enquiry report dated 24.02.2015 is at Annexure 'A-3'. At the end of the enquiry report, the relevant observations of the Enquiry Officer in last two pages are as follows:-

“ वरील सर्व बाबींचा व प्राप्त पुराव्याचा विचार करता या तुटीला सर्वस्वी एकटे गोदामपाल जबाबदार धरणे योग्य नाही. उलटपक्षी प्रथम जबाबदारी हि तहसिलदार व तत्कालीन पुरवठा निरीक्षक यांचीच असलेबाबत प्रथमदर्शनी दिसून येते.

अपचारी श्री. कुलथे यांनी पुराव्याकामी दाखल केलेले जामखेड येथील गोदामाची माहे १०/९८८ ते ६/९९ या कालावधीतील तपासणी शक पुर्तता तहसिलदार जामखेड यांनी त्यांचे पत्र क्र. कावि गोदाम २५७/२००१ दि. ६/७/२००१ अन्वये जिल्हाधिकारी यांना अलहिदा सादर केले बाबत दिसून येते (पा.नं.५४५)

श्री.कुलथे अपचारी यांनी पुराव्याकामी सादर केलेले मा. विभागीय आयुक्त नाशिक विभाग यांचेकडील आस्थापना अपिल क्र. ७/२०१० निकाल ता. २३/९/२०१० चे अवलोकन केले असता तत्कालीन तहसिलदार यांनी पूर्वग्रह दुषित होऊन दि.१/४/२००६ ते १०/२/२००७ मधिल गोपनिय अहवालातील शैरा कायम ठेवला होता. त्याबाबत मा.आयुक्त सौ यांचेसमोर सुनावणी होऊन श्री. कुलथे यांचा दि.१/४/२००६ ते



१०/२/२००७ या कालावधीतील प्रतिकूल शोरे काढून टाकणेबाबत आदेशित कलेले आहे. (पा.नं. ५६५ ते ५७५)

परिच्छेद क्र. १०: निष्कर्ष

महाराष्ट्र नागरी सेवा (शिस्त व अपिल) नियम १९७९ व सुधारीत नियम १९९७ नुसार निष्कर्ष

वरीलप्रमाणे चौकशी अंती उपलब्ध कागदोपत्री पुरावे, साक्षी, उलटतपास यावरोन अपचारी श्री.कुलथे सी.एस. तत्कालीन गोदामपाल तहसिल कार्यालय जामखेड यांचेविरूद्ध ठेवण्यांत आलेले दोषारोप हे पुर्णतः सिध्द होत नाहीत. असे इकडील मत आहे.

अहमदनगर  
दि.२४/०२/२०१५

चौकशी अधिकारी  
विभागीय चौकशी  
अहमदनगर ”

9. After receipt of the said enquiry report, the respondent No.4 addressed letter dated 28.02.2017 (Annexure 'A-4') to the respondent No.2. The last portion of the said letter by way of proposal which is follows:-

“वरील प्रमाणे चौकशी अहवालातील मुदयांचा विचार करता सन २००४ मधील दुष्काळ परिस्थितीत जामखेड तालुक्यात मोठया प्रमाणात धान्याची आवक सुरु असलेने व श्री. कुलथे तत्का. गोदामपाल यांचे अधिनस्त नऊ गोदाम असलेने व सदरचे गोदाम मुख्यालयापासुन १५ ते २० कि.मी. अंतरावर असलेने व गोदामाचे क्षमतेपेक्षा जास्त धान्य सदर गोदामात उतरवुन घेतल्याने व एकाच वेळेस अनेक गोदाम मध्ये धान्याचे गाडया उतरवुन घ्यावे लागत असलेने गोदामपाल कडून अनियमितता झाली असल्याचे दिसते. तसेच गोदामाची दुरावस्था असलेने व त्यात क्षमतेपेक्षा जास्त धान्य साठविल्याने गोदामात त्रुटीचे प्रकरण मान्य करणेस हरकत नाही परंतु सदर बाबत तत्कालीन गोदामपाल श्री कुलथे यांचेकडून कामात झालेले अनियमितता विचार करता श्री सी एस कुलथे यांचे एक वर्षासाठी वेतनवाढ रोखणे ची शास्ती देणे योग्य नाहील असे इकडील मत आहे. तरी प्रस्तुत प्रकरण ओदशास्तव सविनय सादर.

आपला विश्वासू  
जिल्हा पुरवठा अधिकारी  
अहमदनगर ”

10. Thereafter, the respondent No.2 issued final show cause notice dated 13.11.2018 (Annexure 'A-5' collectively) to the applicant as to why two annual increments should not be stooped permanently. The applicant submitted his detailed reply dated 28.12.2018 to the said show cause notice (part of Annexure 'A-5' collectively). Thereafter, the respondent No.2 issued impugned order dated 26.08.2019 (Annexure 'A-6') imposing punishment of stoppage of two annual increments permanently and recovery of an amount of Rs. 6,46,723/-.

11. Perusal of the said impugned order of punishment (Annexure 'A-6') would show that the respondent No.2 has not taken into consideration as to which part of charges were stated to be proved when the enquiry officer stated that the charges were partly proved. This deficiency of the finding of the enquiry report goes to the root of the matter. Unless finding is considered as to whether the specific part of the charges are proved, it is not proper on the part of the disciplinary authority to impose punishment. It should be made known to delinquent as to exactly what charges are proved against the applicant. Moreover, the respondent No.2 i.e. the disciplinary authority has not taken into consideration

that the enquiry officer also held the Tahsildar i.e. the respondent No.3 and District Supply officer i.e. the respondent No.4 were equally responsible for the alleged misconduct /irregularities.

12. However, nothing is placed on record to show that any action is being taken against them. In view of the same, it is clear cut case where the applicant has been discriminated while imposing the punishment. In such circumstances, alleged role of the applicant in the whole process becomes vague. Moreover, the disciplinary action initiated against the applicant also suffers from discriminatory treatment being meted out to the applicant. The right of equality of the applicant is defeated.

13. In these circumstances, the impugned order of punishment imposed upon the applicant by order dated 26.08.2019 (Annexure 'A-6') falls to the ground and it is unsustainable in the eyes of the law. The appellate authorities while considering the receptive departmental appeals have failed to consider those aspects of the matter. Therefore, those impugned orders are also liable to be

quashed and set aside being unsustainable in the eyes of law.  
I therefore, proceed to pass the following order:-

**ORDER**

The Original Application is allowed in following terms:-

- (A) The impugned order of punishment dated 26.08.2019 (Annexure 'A-6') issued by the respondent No.2 to the effect of recovery of an amount of Rs. 6,46,723/- withholding two annual increments permanently and order of rejection of appeal No. 23/2019 vide order dated 21.12.2020 (Annexure 'A-8') issued by the respondent No.1 and order dated 23.09.2015 (Annexure 'A-11') issued by the respondent No.2 are quashed and set aside.
- (B) No order as to costs.

**(V.D. DONGRE)**  
**MEMBER (J)**

**Place:- Aurangabad**  
**Date : 21.02.2023.**  
SAS O.A.180/2021