

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 190 OF 2017**

**DISTRICT : OSMANABAD**

**Dattatraya Jagganathrao Zombade,** )  
Age : 65 years, Occu. : Pensioner, )  
R/o : Ekkondi Road, Tq. Omerga, )  
District Osmanabad. )  
.. **APPLICANT**

**V E R S U S**

1. **State of Maharashtra,** )  
Secretary, Revenue and Forest Department,) )  
Mantralaya, Mumbai. )  
2. **The Commissioner,** )  
Revenue, Aurangabad. )  
3. **The Collector,** )  
(Revenue), Osmanabad. )  
.. **RESPONDENTS**

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**APPEARANCE** : Shri Avinash Deshmukh, Advocate holding for  
Shamsunder Patil, Advocate for the Applicant.

: Shri V.R. Bhumkar, P.O. for the Respondents.

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**CORAM** : **Shri V.D. Dongre, Member (J)**  
**and**  
**Shri Bijay Kumar, Member (A)**

**Reserved on** : **10.01.2023**

**Pronounced on** : **18.01.2023**  
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**O R D E R**

**(Per : Shri Bijay Kumar, Member (A))**

1. By invoking provisions of Section 19 of the Administrative  
Tribunals Act, 1985, this Original Application has been filed on

29.09.2014 being aggrieved by impugned order dated 06.07.2002 passed by respondent No. 3 imposing punishment of reversion from the post of Awwal Karkoon to Clerk on the initial basic pay of Clerk and also by the order of respondent No. 2, the appellate authority, dated- 12.05.2004 and order of respondent No. 1, dated 31.05.2011 rejecting applicant's petition of revision. A Miscellaneous Application No. 287/2014 in O.A. (St.) No. 1095/2014 was filed for condonation of delay of 859 days in filing the Original Application, which was allowed vide an Oral Order dated 29.04.2015 on payment of cost of Rs. 1000/- by the applicant. The applicant paid the amount of cost imposed in the accounts of MAT Bar Association on 21.03.2017 therefore, the Original Application was registered with regular number as 190/2017.

2. On 20.07.2017, the applicant prayed for leave for amending prayer clause by inserting clause B-1 in prayer clause, which was allowed to be carried out within a period of one week and the applicant inserted a new clause B-1 as reproduced below by carrying out amendment on 27.07.2017 :-

*“B-1. To Quash and set aside the order dated 31.03.2006 passed by the collector Osmanabad imposing the punishment of compulsory retirement from 31.03.2006 on the ground of conviction in special case.”*

3. Affidavit in reply on behalf of respondent Nos. 2 and 3 was filed by learned Presenting Officer on 24.01.2022, which was taken on record and a copy thereof supplied to the other side.

4. The matter was taken up for final hearing on 19.04.2022 and the same remained part-heard to be heard again on 27.04.2022. However, with consent of two sides the matter was adjourned for hearing on 01.07.2022. On 01.07.2022, the applicant sought leave to amend the Original Application before the part-heard matter is taken up for hearing again. The leave for second amendment in part-heard matter was allowed vide Oral Order dated 01.07.2022 passed by the Hon'ble Vice-Chairman, who had heard the matter due to unavailability of Division Bench. According to the second amendment to the prayer clause, B-1 was re-amended and a new prayer clause B-2 was inserted which reads as follows :-

*["B-1. To Quash and set aside the order dated 31.03.2006 passed by the collector Osmanabad imposing the punishment of compulsory retirement from 31.03.2006 on the ground of conviction in special case."] was replaced by a revised prayer clause B-1 and a new prayer clause B-2 was introduced as follows :-*

*“(B-1)The order dated 13.03.2006 of the collector, Osmanabad thereby retiring the applicant compulsorily may kindly be quashed and set aside.*

*“(B-2)The Collector, Osmanabad may kindly be directed to forthwith reinstate the applicant in service with effect from 31.03.2006 with all service benefits.”*

5. On next date of hearing that took place on 10.08.2022, the matter was adjourned to next date of 25.08.2022 with observation that the respondents may file reply to the amended O.A., if they so desire. Final hearing of the part-heard matter concluded on 19.09.2022 and the matter was reserved for orders.

6. As the constitution of Division Bench was changed before final orders had been passed and therefore, the matter was fixed for re-hearing on 17.11.2022. During process of re-hearing it was felt necessary to call for original records of departmental enquiry; however, the same could not be traced back by the respondents who submitted a compilation of fact-sheet marked as “X”. The matter was reserved for orders on 10.01.2023.

7. The facts of the matter may be summed up as follows :-

(a) The departmental enquiry under Rule 8 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 was ordered by the respondent No. 1 against the applicant vide memorandum dated 05.09.1997. The departmental enquiry officer submitted enquiry report dated 20.07.2001 with finding that charge Nos. 1.3 and 4

were proved and charge Nos. 2, 5 and 6 were proved partially. Based on the enquiry report, and upon considering written submission made by the applicant on the enquiry report, respondent No. 3 passed order of punishment of reduction in rank on permanent basis from Awwal Karkoon to Clerk in pay scale of 3050-75-3950-80-4590 and pay fixed the pay at Rs. 3050; the punishment was without effect on annual increment of the applicant in the lower rank of Clerk. It is admittedly that the appeal filed by the applicant against the said punishment order was upheld by the appellate authority vide order dated 12.05.2004. order of the appellate authority was maintained by Hon'ble Minister of State (Revenue) after hearing the petitioner i.e. the present applicant in the O.A. and the revision petition was rejected vide order dated 31.05.2011.

(b) Subsequently, the applicant was convicted under Section 7 and Section 13 (1) (d) with Section 13 (2) of the Prevention of Corruption Act, 1988 by the Special Court at Osmanabad in Special Case No. 8/2000, vide order dated 07.10.2005; the respondent No. 3 had passed order of compulsory retirement of the applicant w.e.f 31.03.2006

vide his order 13.03.2006. Upon having been convicted the applicant in the present O.A. filed a Criminal Appeal No. 728 of 2005 before Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad. Hon'ble High Court at Aurangabad Bench set aside the order of conviction passed by the learned Special Judge in Special Case (AC) No. 8/2000, dated 07.10.2005 and ruled that the accused stood acquitted.

**8. Final Prayer Clauses :-** After carrying out two amendments in the Prayer Clauses of the present Original Application, final version of Prayer Clauses read as follows:-

*“ (A) This Original Application may kindly be allowed.*

*(B) To quash and set aside the order dated 06.07.2002 issued by the Collector, Osmanabad imposing the punishment of reversion from the post of Auwal Karkoon to Clerk on the basic pay (initial pay) and the order dated 10.08.2005 passed in Appeal by the Divisional Commissioner, Aurangabad and the order dated 31.05.2011 passed by the respondent No. 1 confirming the order dated 06.07.2002.*

*(B-1) The order dated 13.03.2006 of the collector, Osmanabad thereby retiring the applicant compulsorily may kindly be quashed and set aside.*

*(B-2) The Collector, Osmanabad may kindly be directed to forthwith reinstate the applicant in service with effect from 31.03.2006 with all service benefits.*

*(C) To hold and declare that the applicant is entitled to benefit of the post of Awwal Karkoon w.e.f. 06.07.2002 and further all consequential benefit.*

*(D) Any other appropriate relief as may be deemed fit by this Hon'ble Tribunal may kindly be granted."*

9. The applicant has cited following main reasons for quashing and setting aside order of punishment passed by respondent No. 3, dated 06.07.2002 :-

(a) The applicant (delinquent employee in DE) was not supplied with necessary documents to defend himself.

(b) The applicant was not allowed to cross-examine the witnesses.

(c) Enquiry officer did not record his findings on the basis of the test as laid down under the Indian Evidence Act. Departmental Enquiry Officer did not record how he assessed evidence before him.

(d) The applicant was not provided with a copy of Enquiry Report at the time of issuing him a final show cause notice on 30.08.2001.

10. The applicant has submitted copies of representations made before Tahsildar, Umarga, dated 15.01.1998 whereby, the applicant had claimed to be on sick leave as a result of which he could not participate in proceedings of departmental enquiry. However, he has not mentioned about his requisition for certain definite documents. From a copy of reply sent by Tahsildar Umarga, bearing No. ९८ आस्था कावि २०४ तहसील कार्यालय उमरगा, दिनांक मार्च १९९८, it may be inferred that the applicant had demanded copies of orders in respect of sanction of leaves of Kotwals during period prior to year 1993 which were not available with the Tahsil office, for which no reasons had been stated by the Tahsil Office Umarga. It is obvious from the order of punishment passed by the Disciplinary Authority i.e. the respondent No. 3 that the said authority has overlooked the vital lacunae in process of carrying out the Departmental Enquiry.

11. On perusal of order passed by the appellate authority deciding appeal against orders of Disciplinary Authority it is clear that though the appellate authority had given hearing to the applicant however, he too had not evaluated impact of non-supply of documents asked for which related to charges against the delinquent (applicant in this O.A.) in defending himself. Likewise, non-supply of relevant documents to the original



applicant during departmental proceeding does not seem to have been brought to notice of Hon'ble Minister of State (Revenue) by the respondents, as a result of this any finding on the same is not found in the order passed in respect of Revision Petition.

12. The applicant had submitted a copy of his reply to the final show cause notice issued to him dated 30.08.2001. His reply is reproduced verbatim for ready reference as follows. Upon plain reading of the same, it is evident that the grounds of seeking relief as enumerated in para 9 of this order was not reiterated by the applicant, however, in the interest of justice, we are of the considered opinion that onus to give due consideration to the same had equally been responsible of enquiry officer and Disciplinary Authority.

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दिनांक १०.०६.२००१

प्रति,

मा. जिल्हाधिकारी,  
उस्मानाबाद.

विषय :- विभागीय चौकशी बाबत  
कोतवाल आस्थापना तहसिल कार्यालय उमरगा.

संदर्भ :- आपली कार्यालयीन नोटीस क्रं. ९७-मशाका-३ आस्था-३-आर. ४२०  
दि. ३०.८.२००१. अवलोकन व्हावी.

महोदय,

संदर्भात नोटीस सोबत उमरगा तालुका कोतवाल आस्थापना विभागातील कोतवालाचे सेवा पुस्तिकेतील रजा मंजूरी, वार्षिक तपासणी वगैरे बाबत माझे विरुद्ध विभागीय चौकशी चालू करण्यात आली होती त्या बाबत मी खालील प्रमाणे स्पष्टीकरण सविनय सादर करीत आहे.

माझेवर एकुण (६) दोषारोप ठेवण्यात आले ओते त्यापैकी दोषारोप क्रं. २, ५, ६ अशतः सिध्द होतात व दोषारोप क्रं. १,३,४ सिध्द होतात असे नमुद करण्यात आलेले आहे. वरील दोषारोपाचे मी खालील प्रमाणे स्पष्टीकरण सादर करीत आहे.

- १) दोषारोप क्रं. २ :- मी कार्यरत असताना उमरगा तालुक्यातील कोतवालाचे सेवा पटाची संबंधित लिपिकाकडून पूर्ण पुर्तता करून घेतलेली आहे सदर दोषातून मला मुक्त करण्यात यावे.
- २) दोषारोप क्रं. ५ :- कोतवालाची मासिक पगार संबंधित लिपिकाचे वेळेत तपासणीस न सादर केल्यामुळे सदर दोषारोप माझेवर ठेवण्यात आला आहे. कोतवाल आस्थापनेची तपासणीचे वेळी मला कोणत्याही प्रकारची सुचना किंवा लेखी आदेश संबंधित तपासणी अधिका-यांनी दिलेली नाही. माझे पश्चात कोतवाल आस्थापनेची तपासणी केली आहे. त्यामुळे मी संबंधित लिपिकाकडून पगार देयके तपासणीस सादर करू शकलो नाही.  
तरी विनंती की, वरील दोष आरोपातून मला मुक्त करावे.
- ३) दोषारोप क्रं. ६ :- महाराष्ट्र नागरी सेवा (वेतन) नियम १९८१ मधील तरतुदीनुसार विहित अभिलेखा अद्यावत करून अ.का.(म) किंवा तहसिलदारकडे योग्य त्या कार्यवाहीस्तव सादर करणेचे संबंधित लिपिकाचे कर्तव्य आहे. त्यानी त्यांचे कर्तव्य बजावले नाही. त्यामुळे वरील दोषारोप माझेवर ठेवणे अन्यायकारक आहे. तरी विनंती की, वरील दोषारोपातून मला मुक्त करावे.
- ४) दोषारोप क्रं. १ :- सेवा पुस्तीकेतील नोंदी अद्यावत करण्यात आलेल्या होत्या परंतु तपासणी अधिका-याकडे योग्य रितीने तपासणी सादर केलेले नाहीत. व ज्या नोंदी अद्यावत नव्हते त्या बाबत संबंधित लिपिकास बरेच वेळी अ.का.(म) या नात्याने सुचना दिलेले होते. तरी विनंती की, वरील दोषारोपातून मला मुक्त करावे.
- ५) दोषारोप क्रं. ३ :- रजा मंजूरीचे प्रारम थेट तहसिलदार मार्फत मंजूर झाल्याने रजा मंजूर आदेश पारीत करण्यात आले आहेत. ही बाब तपासणी अधिकारी यांनी त्याचवेळी नजरेस आणून दिलेली नाही. केवळ मोघम तपासणी करूनच अहवाल सादर केले आहेत. कारण सदर प्रकरणात तपासणी अधिका-यांना चौकशीचे वेळी पाचारण केले असता ते हजर राहिलेले नाहीत. तसेच अभिलेखा आजही तपासणीस घेतले तरी थेट रजा आदेशावर सहया झालेले दिसून येतील. तरी विनंती की, सदर दोषारोपातून मला मुक्त करावे.
- ६) दोषारोप क्रं. ४ :- कार्यालयीन पध्दतीनुसार दरमहा, नायब तहसिलदार, तहसिलदार, किंवा वरिष्ठ कार्यालया मार्फत संबंधित विभागाची तपासणी झालेली

आहे. त्यांना तशा सुचनाही देण्यात आलेल्या आहेत. असे असताना अभिलेखात खाडाखोड करणे वगैरे बाबी संबंधित लिपिकाचे जबाबदारीच्या आहेत. सुचना देणे, अंमलबजावणी करून घेणे ह्या बाबी अ.का.(म) यांचे आहेत. त्या नुसार मी त्या बाबीची पूर्तता केली आहे. तरी विनंती की, वरील दोषारोपातून मला मुक्त करावे.

वरील दोषारोप क्रं. १ ते ६ मध्ये मी दोषी नाही. माझेवर ठेवण्यात आलेले दोषा आरोप हे मझ्यावर अन्यायकारक आहेत.

तरी विनंती की, वरील दोषारोपातून मला मुक्त करावे.

आपला विश्वासू,

सही/-  
(डि.जे. झोंबाडे)  
अ.का.(सं.गां.यो)  
तहसिल कार्यालय उमरगा. ”

13. A point of law has been raised by the learned Advocate Shri A.S. Deshmukh holding for Advocate Shri Shamsunder Patil appearing for the applicant that the penalty of reduction to lower time-scale of pay, grade, post or service has to be for a period specified in the order of penalty. He has contended that the order of penalty passed by the Disciplinary Authority does not prescribe any specific period. On perusal of the order passed by the Disciplinary Authority which is reproduced below for ready reference, we are also of considered opinion that the arguments advanced by the learned Advocate for the applicant holds ground. Though the applicant had only 4 years to superannuate, but that does not lower the gravity of omission of critical points in passing orders as per Maharashtra Civil Services (Discipline and Appeal) Rules, 1979.

**“आ दे श**

श्री.डि.जे. झोंबाडे, अव्वल कारकुन तहसील कार्यालय, उमरगा यांना पदावनत करून लिपीक संवर्गातील वेतन रु. ३०५०-७४-३९५०-८०-४५९० च्या श्रेणीत रु. ३०५०/- वर ठेवण्यांत येते. सदर पदावनती ही कायम स्वरूपी राहिल तसेच त्यांना पदावनत श्रेणीत देय होणा-या पुढील वार्षिक वेतन वाढीवर परिणाम होणार नाही.”

14. The Hon’ble High Court of Judicature at Bombay, vide its judgment in Criminal Appeal No. 728/2005, delivered on 24.11.2020 has acquitted the applicant, therefore, the order of compulsory retirement of the applicant passed by the respondent No. 3 vide order dated 13.03.2006 in exercise of powers vested in him under rule 13 (i) of MCS (Discipline & Appeal) Rules, 1979 becomes null & void since the date the penalty of compulsory retirement had been given effect and all consequential benefits become admissible.

15. In view of above findings, following order is passed :-

**ORDER**

(A) Original Application No. 190 of 2017 is allowed in terms of prayer clauses (B), (B1), (B2) and (C) of para 19 with a direction to the respondents in general and respondent No. 3 in particular to release consequential benefits to the applicant within a period of four months from the date of receipt of certified copy of this order.

(C) No order as to costs.

**MEMBER (A)****MEMBER (J)****Kpb/D.B. O.A. No. 337/2019 VDD & BK 2022 Reversion**