

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 300 OF 2015

DISTRICT : OSMANABAD

Santosh Prabhakarrao Namdas,)
Age : 61 years, Occu. : Retired (pensioner),)
R/o. Vidyanagar, Tambri Vibhag, Opp. Ladies)
Club, Osmanabad.)

.. **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai – 400 032.)
2. **The Divisional Commissioner,**)
Aurangabad Division, Aurangabad.)
3. **District Collector,**)
Osmanabad, District Osmanabad.)
4. **The Tahsildar,**)
Tuljapur, Taluka Tuljapur, Dist. Osmanabad.)
5. **The Inquiry Officer on Contract,**)
Office of District Collector,)
Osmanabad.)

.. **RESPONDENTS**

APPEARANCE : Shri Avinash Deshmukh, Advocate for the
Applicant.

: Shri M.P. Gude, P.O. for the Respondents.

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

Reserved on : **02.02.2023**

Pronounced on : **01.03.2023**

ORDER**(Per : Shri V.D. Dongre, Member (J))**

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, the present Original Application is filed challenging the impugned order of punishment dated 03.02.2014 (Annexure A-11) issued by the respondent No. 3 i.e. the Collector, Osmanabad Dist. Osmanabad, whereby recovery of amount of Rs. 4,88,880/- and permanent deduction of 20% from the pension of the applicant is ordered and which order is confirmed by the respondent No. 2 i.e. the Divisional Commissioner, Aurangabad by the impugned order dated 09.10.2014 (Annexure A-12) in departmental appeal. The applicant has sought exoneration of charges levelled against him and seeking full pension and other retirement benefits.

2. The facts in brief giving rise to this application are as follows :-

(a) The applicant joined the duty as Clerk on 27.11.1975. He has performed his duties very sincerely and honestly during his entire service career. During that period he earned promotion up to the level of Awwal Karkoon. He retired from service on superannuation w.e.f. 31.01.2012.

(b) During the course of service, the applicant was posted at various places. The last posting given to him was at Tuljapur Tahsil Office, District Osmanabad. He joined there on the post of Awwal Karkoon on 06.06.2008. He was given duties of Sampoon Gramin Rozgar Yojna (hereinafter called as 'Yojna'). The said Yojna is Central Government scheme, which was started in the year 2001 and was discontinued in the year 2007. Requisite procedure for said Yojna was laid down by the Government of Maharashtra by passing G.R. dated 08.02.2002 (Annexure A-1).

(c) It is submitted that though said scheme / Yojna was in force from 2001-2007, it was not implemented fully for the reason that Labourers in whose favour coupons were issued, they were not given food grains and even after closure of the said Yojna, the same labourers were not issued food grains, though coupons were issued. In view of that, the Divisional Commissioner (Supply), Aurangabad issued order dated 16.02.2009 (Annexure A-2) to all the concerned to make an enquiry in the matter and to release food grains to such labourers having coupons on the date of closing of Yojna.

(d) The respondent No. 4 i.e. the Tahsildar, Tuljapur by letter dated 07.01.2009 based on the office note (Annexure A-3) had given authority to the Awwal Karkoon i.e. the present applicant for releasing / granting food grains under the said Yojna.

(e) It is submitted that demands from the implementing agencies i.e. Zilla Parishad, District Agriculture Officer, Executive Engineer, Irrigation, Executive Engineer, PWD, Deputy Director of Social Forestry, District Forest Officer, EE Zilla Parishad PWD, EE Zilla Parishad Irrigation were pending even after closure of the scheme. The applicant accordingly after stock of food grains was made available scrutinized the demands, verified the coupons and accordingly released food grains in the month of January, 2009 itself to the requisite labourers. The applicant acted in accordance with procedure and law.

(f) However, all of a sudden in the month of April 2001, the Deputy Commissioner of Civil Supply (under Divisional Commissioner Aurangabad) visited the office of the applicant and asked for the record of the Yojna orally. The applicant made available all the record in the office of his

tenure to him and record, which was kept in the office for the period of Yojna also. Thereafter, the applicant did not hear anything about it.

(g) The applicant thereafter retired from service on superannuation w.e.f. 31.01.2012. The office had submitted requisite pension papers of the applicant to the office of Accountant General (A&E-II), Nagpur. However, for want of No Enquiry Certificate, the pension was not released to the applicant. In view of that the applicant became suspicious. The applicant was granted only provisional pension.

(h) Thereafter, the applicant served with copy of memorandum of charge-sheet along with order dated 20.09.2012 (Annexure A-4) issued by the Collector, Osmanabad appointing Shri B.C. Hange as Contractual Enquiry Officer and Naib Tahsildar, Tahsil Office, Tuljapur as Presenting Officer to hold the Departmental Enquiry against the applicant.

(i) On receipt of charge sheet, the applicant submitted detailed reply on 11.10.2012 (Annexure A-5) with supporting documents to the charge sheet. Thereafter, the

Departmental Enquiry proceeded against the applicant. Witnesses were examined by the Presenting Officer in the said D.E., which statements are produced at Annexure A-6 collectively.

(j) It is further submitted that after examining Government witnesses, the inquiry officer was under obligation to question the delinquent on circumstances appearing against him in the evidence as per sub-rule 20 of Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 so that the delinquent applicant would have been in a position to explain any circumstances appearing in evidence against the applicant. That was not done. In view of that, the D.E. held against the applicant gets vitiated.

(k) Immediately after conclusion of evidence of departmental witnesses, the Presenting Officer submitted his written brief and also submitted list of village wise number of pending coupons as reflected in Annexure A-7 collectively. The applicant thereafter, submitted his defence statement dated 09.05.2013 along with supportive documents (Annexure A-8 collectively).

(l) After submission of defence statement submitted by the applicant, the applicant said to have made enquiry with the Tahsildar, Tuljapur about the order dated 07.01.2009 (Annexure A-3) authorizing the applicant for completing the work of releasing food grains under the said Yojna, in which the Tahsildar, Tuljapur said to have issue letter dated 30.07.2013 (Annexure A-9) disputing issuance of order dated 07.01.2009 (Annexure A-3). Thereafter, the enquiry officer submitted his enquiry report dated 31.07.2013 (part of Annexure A-10 collectively) without verifying the fact of authorization given to the applicant. Thereafter, the applicant was served with memo dated 12.08.2013 (part of Annexure A-10 collectively) along with enquiry report, to which the applicant submitted his reply dated 23.8.2013 (part of Annexure A-10 collectively).

(m) Thereafter, the respondent No. 3 i.e. the Collector, Osmanabad passed final impugned punishment order dated 03.02.2014 (Annexure A-11), by which the punishment of recovery of Rs. 4,88,880/- and 20% permanent deduction from pension of the applicant were ordered.

(n) The applicant filed departmental appeal against the said impugned punishment order dated 03.02.2014 (Annexure A-11) before the respondent No. 2 i.e. the Divisional Commissioner, Aurangabad on 13.02.2014, in which the remarks of the Collector were called and finally said appeal came to be dismissed by further impugned order dated 09.10.2014 (Annexure A-12).

(o) It is the contention of the applicant that the impugned orders are passed without proper appreciation of facts on record. In fact, the applicant is deprived of his right of giving explanation to the circumstances appeared against him in the D.E. by not giving opportunity of giving his statement as contemplated under Rule 8(20) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. In view of the same, both the impugned orders are liable to be quashed and set aside. Hence, the present original Application.

3. The affidavit in reply is filed on behalf of respondent Nos. 2 and 3 by one Dr. Prashant Bholanath Narnaware, working as Collector in the office of respondent No. 3 i.e. the Collector, Osmanabad. Thereby he denied all the adverse contentions

raised in the present Original Application. It is specifically submitted that Tahsildar, Tuljapur has informed that original copy of letter dated 07.01.2009 is not available to office record, but the outward number is available in the outward register. Letter dated 07.01.2009 and official noting were not produced before the Enquiry Officer at the time of enquiry and those were not forwarded to this office also till date. It is further submitted that the enquiry Officer after detailed enquiry and after considering the evidence produced on record, recorded the findings that the applicant has committed misappropriation during his tenure of 06.06.2008 to 31.01.2012 by sanctioning food grains permit suo-moto under MREGS. In view of that, the findings are proper and accordingly the impugned punishment order was issued. It was also revealed in the enquiry that the record was not maintained about distribution of food grains. In view of the same, charges in the D.E. would be duly proved. The impugned order is in accordance with law. The departmental appeal was also rightly rejected. Hence, the present Original Application is liable to be dismissed.

4. We have heard the arguments advanced by Shri Avinash Deshmukh, learned Advocate for the applicant on one hand and

Shri M.P. Gude, learned Presenting Officer for the respondent authorities on the other hand.

5. We have carefully examined the enquiry report.

6. Perusal of the pleadings of both the sides, documents and more particularly enquiry report dated 31.07.2013 (part of Annexure A-10 collectively) would show that the applicant was working on the post of Awwal Karkoon in the office of Tahsildar, Tuljapur i.e. the respondent No. 4 from 06.06.2008 till his retirement on superannuation on 31.01.2012. Memorandum of charges (Annexure A-4) served upon the applicant incorporated alleged misconduct in implementing Scheme / Yojna during his tenure of 06.06.2008 till 31.01.2012. In the Departmental Enquiry, the Presenting Officer examined the witnesses, which are as follows :-

- (i) Deelip Vishwanath Jamadar, the then Deputy Commissioner (Supply), Divisional Commissioner Office, Aurangabad.
- (ii) Shri Anil Devlankar, the then Tahsildar in the office of Deputy Commissioner Supply Division, Divisional Commissioner Office, Aurangabad.
- (iii) Dr. Dattatray Shripat Ralebhat, the then Technical Officer in the office of Divisional Commissioner Office, Aurangabad.

- (iv) Shri K.K. Molke, Divisional Godown Inspector in the office of Divisional Commissioner Office, Aurangabad.
- (v) Shri Devendra Tukaram Katke, the then Tahsildar, Tuljapur.

Thereafter, the Presenting Officer R.A. Jadhav filed his written brief on 23/25.04.2013 along with letter dated 02.07.2008 and list of pending Coupons village wise (Annexure A-7 collectively). Thereafter, the applicant submitted his final statement on 09.05.2013 along with supportive documents (Annexure A-8 collectively).

7. In view of above, legal submissions are made on behalf of the applicant contending that due procedure is not followed while conducting the said D.E. as laid down under rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. For the purpose of deciding the present Original Application, the relevant sub rules are 18, 19, 20, 21 and 25 of Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979.

Those provisions are as under :-

“8. Procedure for imposing major penalties-

(18) When the case for the disciplinary authority is closed, the Government servant shall be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded and the Government servant shall be required to sign the record. In either case a copy of the

statement of defence shall be given to the Presenting Officer appointed, if any.

(19) The Evidence on behalf of the Government servant shall then be produced. The Government servant may examine himself in his own behalf if he so prefers. The witnesses produced by the Government servant shall then be examined and shall be liable to cross- examination, re-examination and examination by the inquiring authority according to the provisions applicable to the witnesses for the disciplinary authority.

(20) The inquiring authority may, after the Government servant closes his case and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him.

(21) The inquiring authority may, after the completion of the production of evidence, hear the Presenting Officer, appointed, if any, and the Government servant, or permit them to file the written briefs of their respective case, if they so desire.

(25) After conclusion of the inquiry, a report shall be prepared by the inquiring authority, such report shall contain-

- (a) the articles of the charge and the statement of the imputations of misconduct or misbehaviour;*
- (b) the defence of the Government servant in respect of each article of charge;*
- (c) an assessment of the evidence in respect of each article of charge;*
- (d) the findings on each article of charge and the reasons therefor;”*

8. In the facts and circumstances of the case, sub-rule 20 of Rule 8 of the said rule is important, which mandates that enquiring authority may after the Government servant closes his case and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing

against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him.

9. Perusal of the enquiry proceedings would show that the applicant in defence has not examined any witnesses nor examined himself and only filed final defence statement dated 09.05.2012. In view of that, it was incumbent upon the enquiry officer to follow the procedure of generally putting question to the applicant on the circumstances appearing against him in the evidence for purporting enabling the applicant to explain circumstances appearing in the witnesses against him.

10. In this regard, learned Advocate for the applicant has further placed reliance on the citation of the Hon'ble High Court, Aurangabad Bench in the matter of **Vijay Shamrao Bhale Vs. Godavari Garments Ltd. and Anr.** reported in **2011(2) Mh.L.J.**

983. In para No. 7 of the said judgment it is held as follows :-

"7. The argument of Shri Joshi that Rule 8(20) of the said Rules, 1979 are not followed requires consideration. The said Rule 8(20) of Rules 1979 reads as under :-

"(20) The inquiring authority may, after the Government servant closes his case and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him."

On perusal of the said Rule, it is manifest that the said Rule mandates the inquiring authority to question the delinquent on the circumstances appearing against him in the evidence, so that the delinquent may get opportunity to explain any circumstances appearing in the evidence against him. In the present case, the delinquent has not examined himself. If the delinquent has not examined himself, in that case the Inquiry Officer is not left with any discretion but has to question the delinquent about the circumstances appearing against him. The use of the word shall shows that the said provision is imperative and the same is mandatory. In the first part of the said Sub rule the legislature has used the word 'may', but when the delinquent has not examined himself has used the word "shall", which itself clarifies that the word shall has to be considered as mandatory. The use of the word 'may' at one place and 'shall' at another place in the same rule would strengthen the inference that these words have been used in their primary sense, and that 'shall' should be considered as mandatory. The use of the word 'shall' therein as against 'may' shows that the same is mandatory. The use of the word 'shall' with respect to one matter and the used word 'may' with respect to another matter, in the same rule, would lead to the conclusion that the word 'shall' imposes an obligation. Whereas the word 'may' confers a discretionary powers. If, the delinquent has not examined himself, then it is obligatory on the inquiring authority to question the delinquent on the circumstances appearing against him in the evidence for the purposes of enabling him to explain any circumstances appearing in the evidence against him, and if the delinquent has examined himself, then the discretion vests with the Inquiry Officer to question the delinquent or not. In the present case, it is not disputed that the delinquent has not examined himself, in such circumstances it was mandatory for the Inquiry Officer to question the petitioner regarding the circumstances appearing against him. The said Rule has not been complied, and as such inquiry stands vitiated. The Division Bench of this Court in the case of "Masuood Alam Khan-Pathan Vs. State of Maharashtra & others" referred supra has also observed that rule of Audi Alteram Partem is pregnant in the sub-rule(20) of Rule 8, departure there from would tantamount to violation of natural justice. On this count itself the inquiry vitiates, there cannot be any doubt that by non-observance of the said rule the petitioner could not get the opportunity to explain regarding the circumstances which were prejudicial to him in the evidence.”

11. In the facts and circumstances of the present case, in our considered opinion, the ratio laid down in the above-said citation

of ***Vijay Shamrao Bhale (cited supra)*** is aptly applicable in the present case. Failure to follow the procedure as laid down under Rule 8(20) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 goes to the root of the matter and is fatal to the enquiry and it gets vitiated on that count. In these circumstances, this O.A. succeeds. The impugned order of punishment order dated 03.02.2014 (Annexure A-11) passed by the respondent No. 3 i.e. the Collector, Osmanabad Dist. Osmanabad and which order is confirmed by the respondent No. 2 i.e. the Divisional Commissioner, Aurangabad by the impugned order dated 09.10.2014 (Annexure A-12) in departmental appeal are liable to be quashed and set aside. Hence, we proceed to pass the following order :-

ORDER

The Original Application is allowed in following terms :-

- (A) The impugned order of punishment dated 03.02.2014 (Annexure A-11) issued by the respondent No. 3 i.e. the Collector, Osmanabad Dist. Osmanabad whereby recovery of amount of Rs. 4,88,880/- and permanent deduction of 20% from the pension of the applicant is ordered and which order is confirmed by the respondent No. 2 i.e. the Divisional Commissioner, Aurangabad by the impugned

order dated 09.10.2014 (Annexure A-12) in departmental appeal, are hereby quashed and set aside.

- (B) Consequently the applicant shall be entitled for full pension and other pensionary benefits in accordance with law, which shall be paid to him by the respondents within the period of two months from the date of this order.
- (C) The original record produced for perusal be returned to the learned Presenting Officer.
- (D) There shall be no order as to costs.

MEMBER (A)

MEMBER (J)

Kpb/D.B. O.A. No. 300/2015 VDD & BK 2023 recovery and