

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 514 OF 2019
(Subject – Minor Punishment)**

DISTRICT : NANDED

Sanjay Vithalrao Nagamwad,)
Age : 46 years, Occu. : Talathi (Nanded Tahsil,))
R/o. Bhumai, Anand Nagar Road, Near Maruti))
Mandir, Shahadanagar, Nanded-431 602.)

.... **APPLICANT**

V E R S U S

1. The State of Maharashtra,)
Through Secretary, (Awar Sachiv))
Revenue & Forest Department,)
Mantralaya, Mumbai – 400 032.)

2. The Collector,)
Nanded, District Nanded.)

... RESPONDENTS

APPEARANCE : Smt. A.N. Ansari, Advocate for the Applicant.

: Smt. Sanjivani K. Deshmukh-Ghate,
Presenting Officer for Respondents.

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

DATE : **14.03.2022.**

O R D E R

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, the present Original Application is filed challenging the findings recorded by the

Enquiry Officer in the Enquiry Report dated 11.02.2014 (page No. 24) against the applicant and also challenging the impugned punishment order of the applicant dated 03.09.2016 (page Nos. 154 to 157 of the paper book) passed by the respondent No. 1 i.e. the State of Maharashtra, Revenue and Forest Department.

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

(a) The applicant is serving with the respondent as Talathi. His date of birth is 29.10.1970. He is due to retire on superannuation on 31.10.2028.

(b) It is the case of the applicant that in the year 2011, the applicant was served with the memo with statement of imputation dated 25.10.2011 (page Nos. 13 of the paper book) issued by the respondent No. 1 contending that the Departmental Enquiry is proposed against the applicant and others. In statement of imputation, it is alleged that in the year 2008, there was recruitment for the post of Clerk and Peon by calling applications pursuant to the advertisement dated 25.07.2007. It was alleged that the applicant influenced and/or joined hands with the higher officials to get government employment to his two brothers'

viz. Shriram Vithalrao Nagamwad and Shri Padmakar Vithalrao Nagamwad for the post of Clerk. The applicant submitted his reply dated 29.12.2011 (page No. 19 of the paper book), thereby denying all those allegations. He specifically submitted that the said two candidates, who are selected, are his distant relatives and not his real brothers being members of his family. Only because the name of the father of said candidates' viz. Shriram and Padmakar being Vithalrao Nagamwad, which is also name of father of the applicant, it is assumed that the said Shriram Vithalrao Nagamwad and Shri Padmakar Vithalrao Nagamwad are his brothers. In view of the same, he is not concerned with them and he prayed not to initiate any Departmental Enquiry against him. However, Departmental Enquiry proceeded against him and Shri V.B. Gujar, Deputy Commissioner was appointed as the Enquiry Officer and Shri B.S. Ghuge, the then Residential Deputy Collector was appointed as Presenting Officer.

(c) It is further stated that during the said enquiry, witnesses were examined. The written brief dated 05.12.2013 was submitted by the learned Presenting Officer, to which the applicant also submitted his written

brief dated 10.12.2013. The Enquiry Officer submitted his final report dated 11.02.2014 (page Nos. 24 to 147-a of the paper book). The said enquiry report was served upon the applicant and the applicant was asked to submit his explanation. The applicant submitted his reply dated 06.06.2014 (page No. 148 of the paper book) reiterating his defence and producing on record voters' list, as well as, his ration card. As per the said documents, the applicant has no brothers named as Shriram and Padmakar. As per the said documents, name of the brothers of the applicant are Raju, Shivaji, Pralhad, Balkishan, Yogesh and Nilesh. None of them is Shriram and Padmakar.

(d) It is further submitted that the findings of the Enquiry Officer that the charge is partially proved is not conceivable. The name of the applicant is at Sr. 12 in the order dated 06.12.2011 (page No. 12 of the paper book). Even the Enquiry Officer has stated that it is proved that the said Shriram and Padmakar are not his real brothers, but are in distant relatives and therefore, charges are proved partially. The said findings are not sustainable in the eyes of law.

(e) It is further submitted that the similar findings are given in another co-delinquent viz. Shri Yousufuddin, whose 6% pension amount was deducted for two years.

(f) After submission of the Enquiry Report, the respondent No. 1 passed the final punishment order dated 03.09.2016 (page Nos. 154 to 157 of the paper book) is passed thereby withholding one yearly increment of the applicant for two years with non-cumulative effect.

(g) The applicant earlier challenged both the said orders of findings of enquiry report and final order of imposing punishment by filing O.A. No. 562/2017 before this Tribunal. The applicant was allowed to withdraw the said O.A. as per the order dated 26.09.2017 (page Nos. 158 to 160 of the paper book) with liberty to file departmental appeal.

(h) Applicant accordingly filed departmental appeal, which is at paper book 161 to 169 of the paper book. However, till today the said departmental appeal is not yet decided by the respondents. Hence, the applicant has filed the present Original Application assailing the impugned order of findings in Departmental Enquiry Report dated

11.02.2014 and Final Punishment order dated 03.09.2016, contending that both the said orders are not sustainable in the eyes of law. There is no evidence or material on record to conclude that the charges are proved against the applicant. The findings that the charges are proved partially are perverse and not sustainable. The defence raised by the applicant together with the documents is not appreciated properly by the Enquiry Officer, as well as, by the Disciplinary Authority. The applicant belongs to class III employee in ladder. It cannot be said that he can use his influence in recruitment process. In the circumstances, the impugned orders are not sustainable and the same 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. 1 and 2 by one Shri Prasad S/o Prabhakar Rao Kulkarni, working as Tahsildar (General) Collector Office, Nanded, Dist. Nanded, thereby he denied all the adverse contentions raised in the present Original Application. It is specifically stated that the charge leveled against the applicant that the applicant influenced and/or joined hands with higher officials for getting appointment for his two brothers viz. Shriram Vithalrao Nagamwad and

Padmakar Vithalrao Nagamwad is duly proved against the applicant to the extent that the applicant and selected candidates are not brothers, but they are from the same village and share their kin. Hence, the observation that the charge is partly proved is legal and proper. Moreover, the proper procedure is followed for conducting the Departmental Enquiry held against the applicant. Fair opportunity was given to the applicant during the Departmental Enquiry and even before passing the impugned order of punishment. In the circumstances, the order of findings of the Enquiry Officer in Enquiry Report dated 11.02.2014 (page No. 24) against the applicant and final order of imposition of punishment dated 03.09.2016 (page Nos. 154 to 157 of the paper book) are legal and proper and do not require interference.

4. I have heard arguments advanced by Smt. A.N. Ansari, learned Advocate for the applicant on one hand and Smt. Sanjivani K. Deshmukh-Ghate, learned Presenting Officer for the respondents on the other hand.

5. Perusal of documents annexed with the O.A. and more particularly the Enquiry Report would show that the specific charge was framed against this applicant that the applicant influenced and/or joined hands with the concerned officials in

getting selection of his two brothers viz. Shriram and Padmakar. Finding is given from the evidence on record to the effect that it appears that the candidates' viz. Shriram and Padmakar are not the brothers of the applicant, but they appear to be in distant relation of the applicant and therefore, the charge is partly proved. The findings itself would show that there was no evidence on record to show that Shriram and Padmakar are brothers of the applicant.

6. In fact, during the Departmental Enquiry, the applicant produced the documents of voters' list (page Nos. 150 to 151 of the paper book) and Family Certificate showing members of his family (page No. 152). The said Family Certificate would show that the head of the family is Vithalrao Babanna Nagmwad and it shows that the applicant has six brothers viz. Raju, Shivaji, Pralhad, Balkishan, Yogesh and Nilesh. In said certificate, there is no name of Shriram and Padmakar as brothers of the applicant. In the said certificate, the name of the applicant's father is shown as Vithalrao Babanna Nagamwad. Voters' list also would show the names of applicant and his brothers are at Sr. Nos. 7726, 7728, 4429, 7731, 7732, 7733 & 7734. In the said voters' list, the name of Shriram Vithalrao Nagmwad is

mentioned at Sr. No. 7752 and the name of Padmakar Vithalrao Nagamwad is shown at Sr. No. 7751.

7. Certificate showing family members of another family mention name of Shri Vithalrao Dharmaji Nagamwad as family head. The said certificate is at page No. 153 of the paper book. It shows that the said Vithalrao Dharmaji Nagamwad has six sons viz. Balaji, Sunil, Anil, Padmakar, Shriram and Dharmaji. In view of the same, it is evident that the candidates Shriram and Padmakar belong to altogether different family. However, both these families appear to be residing in same locality.

8. In view of above, it is seen that there was specific charge against the applicant that Shriram and Padmakar are his brothers. There is no charge that the said Shriram and Padmakar are distant relatives of the applicant. In view of that, the findings would be either it is proved or not proved that they are brothers. However, findings are given as partly proved which is based on the supposedly information given by both those candidates in their forms that their father's name is Vithalrao Nagamwad. Incidentally, it appears that name of the father of both these candidate is Vithalrao Nagamwad as that of the applicant. It is of common knowledge that there can be two

persons having same names. In the circumstances, the findings in the enquiry report dated 11.02.2014 (page No. 24) are perverse and unsustainable and could not have been acted upon by the respondent No. 1 while passing final order of imposition of punishment by the order date 03.09.2016 (page Nos. 154 to 157 of the paper book). Consequently, the said final order is also perverse, unsustainable and not tenable. Therefore, both the impugned orders are liable to be quashed and set aside. I therefore, proceed to pass following order :-

ORDER

1. The Original Application is allowed.
2. The impugned order of findings recorded by the Enquiry Officer in the Enquiry Report dated 11.02.2014 (page No. 24) against the applicant and impugned punishment order of the applicant dated 03.09.2016 (page Nos. 154 to 157 of the paper book) are hereby quashed and set aside.
3. There shall be no order as to costs.

PLACE : AURANGABAD.
DATE : 14.03.2022.

(V.D. DONGRE)
MEMBER (J)