

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 561 OF 2016

DIST. : DHULE

Sukhdev s/o Shravan Chitte,)
Age. years, Occu. : Service,)
99 Indraprashta Colony,)
Gondur Road, Deopur, Dhule.) .. **APPLICANT**

V E R S U S

1. The State of Maharashtra,)
Through : Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai – 32.)
)
2. The Divisional Commissioner)
Nasik Division, Nasik.)
)
3. The Collector, Collector Office)
Dhule.) .. **RESPONDENTS**

APPEARANCE :- Shri S.D. Dhongde, learned Advocate for
the applicant.
: Shri M.P. Gude, learned Presenting Officer
for the respondents.

CORAM : **Hon'ble Shri B.P. Patil, Member (J)**
DATE : **8th January, 2019**

O R D E R

1. The applicant has challenged the order dated 16.12.2015 passed by the res. no. 3 the Collector, Collector Office, Dhule imposing punishment of stoppage of one increment for 2 years

and the order dated 30.4.2016 passed by the res. no. 2 the Divisional Commissioner, Nasik dismissing his appeal and confirming the order passed by the res. no. 3, by filing the present Original Applicant and prayed to quash and set aside the same.

2. The applicant is working as a Awal Karkoon in the office of the Collector, Dhule. In the year 2012 he was posted as a Godown Keeper at Nardana, Tq. Shindkheda, Dist. Dhule. On 15 & 16.2.2012, the then Deputy Commissioner (Supply), Nasik Division, Nasik visited the Godown of which the applicant was Godown Keeper. During the inspection he found that 1585 bags of wheat, 507 bags of rice were found uncertified. 525 grams of food grain were found short on an average and 15 bags of rice were found less quantity of 813 grams. On the basis of above said discrepancy notice was issued to the applicant on 31.1.2014. The applicant replied to the said notice on 13.2.2014. The res. no. 3 has found the explanation of the applicant unsatisfactory and therefore initiated a departmental enquiry against him in view of the provisions of rule 8 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. Accordingly a charge sheet has been served on the applicant and the Enquiry Officer has been appointed. During the course of enquiry the applicant had pointed out many irregularities in the inspection and the enquiry

and violation of principles of natural justice. On conclusion of the enquiry, the Enquiry Officer submitted report on 26.6.2015 to the disciplinary authority. The Enquiry Officer had come to the conclusion that the charges leveled against the applicant had not been proved. But the disciplinary authority had not agreed with the findings recorded by the Enquiry Officer and issued the show cause notice to the applicant on 18.6.2015 to which the applicant had given reply on 24.8.2015. After considering his reply vide order dtd. 16.12.2015 the disciplinary authority has imposed a punishment of stoppage of one increment for two years upon the applicant. The applicant has preferred appeal on 16.12.2015 before the res. no. 2 the Divisional Commissioner, Nasik and challenged the order dtd. 16.12.2015 passed by the Disciplinary Authority. It was numbered as Establishment Appeal no. 2/2016. After hearing both the sides, the res. no. 2 the Divisional Commissioner, Nasik decided the appeal of the applicant on 30.4.2016 and dismissed the same by confirming the order of the Collector dated 16.12.2015. The applicant has challenged both the orders by filing the present O.A. on the ground that both the authorities had not considered the report of the Enquiry Officer in its proper perspective. It is his contention that the disciplinary authority had not recorded the reasons for rejecting the findings of the Enquiry Officer and without recording the reasons held him

guilty of the charges leveled against him. It is his contention that both the authorities have not appreciated the evidence on record properly. They have not considered the fact that at the time of visit of Deputy Commissioner (supply) one Shri Tare accompanied him. Said Shri Tare conducted the inspection of the stock and informed the Deputy Commissioner that there was no irregularity or discrepancies in the stock and record maintained by the applicant. It is his contention that one Shri B.B. Kumbhar was examined in the enquiry as witness of disciplinary authority but nothing was brought on record against the applicant in his evidence. It is his contention that the then Deputy Commissioner (Supply) had not appeared before the Enquiry Officer to substantiate the charges / allegations made against the applicant, but disciplinary authority has not considered the said facts and held him guilty without sufficient evidence. It is his further contention that in the absence of cogent evidence, the disciplinary authority has held him guilty. It is his contention that the res. no. 2 has also not considered all the aspects and wrongly rejected his appeal. Therefore, he prayed to quash both the orders dated 16.12.2015 and 30.4.2016 passed by the res. res. nos. 3 & 2 respectively by allowing the present O.A.

3. The res. nos. 1 & 2 have filed their affidavit in reply and has resisted the contentions of the applicant. It is their contention that the Government supplies subsidized grain to the needy persons. It is duty of the Godown Keeper to keep the record of the grains very fairly and neatly. The record and the stock of the grain has to be kept up-to-date. The applicant had not discharged his duty fairly and honestly. Several irregularities were noticed by the inspecting authority at the Divisional level during the inspection and, therefore, a show cause notice was issued to the applicant. The applicant had filed his reply to the said show cause notice, but it was not satisfactory and therefore the disciplinary authority initiated enquiry against him. After due departmental enquiry the disciplinary authority found the applicant guilty of the charges and, therefore, the applicant was punished. It is their contention that the disciplinary authority recorded the reasons while passing the order of punishment against the applicant and there were no irregularities on the part of the disciplinary authority. It is their contention that the Deputy Commissioner had not appeared before the Enquiry Officer but the facts of irregularities noted by him are on record and therefore the disciplinary authority has passed the impugned order imposing the punishment on the applicant. It is their contention that the res. no. 2 has considered the submissions of the

applicant, perused the record and thereafter dismissed the appeal preferred by the applicant. There was no illegality in the impugned orders and, therefore, they supported the impugned order and prayed to reject the O.A.

4. I have heard Shri S.D. Dhongde, learned Advocate for the applicant and Shri M.P. Gude, learned Presenting Officer for the respondent and perused the documents filed on record.

5. Admittedly in the year 2012 the applicant was servicing as a Godown Keeper at Nardana, Tq. Shindkheda, Dist. Dhule. There is no dispute about the fact that on 15th & 16th February, 2012 the then Deputy Commissioner (supply), Nasik Division, Nasik visited the Godown at Nardana. Admittedly during his inspection he noticed some irregularities i.e. shortage of grains. On the basis of his report a notice has been issued to the applicant on 31.1.2014. The applicant has given his reply to the said notice on 13.2.2014. The res. no. 3 the Collector, Dhule found that the reply given by the applicant was unsatisfactory and therefore he decided to initiate a departmental enquiry against him and accordingly the departmental enquiry was initiated against the applicant. The Enquiry Officer was appointed and accordingly he conducted the enquiry and submitted his report dtd. 26.6.2015 to the disciplinary authority. During the enquiry, the Enquiry

Officer found no evidence against the applicant and therefore he held that no charges were proved against the applicant. The disciplinary authority i.e. the Collector, Dhule disagreed with the findings of the Enquiry Officer. The disciplinary authority found that there is sufficient material placed on record to prove the charges against the applicant and therefore held the accused guilty of the charges and he issued a show cause notice to the applicant on 28.7.2015 to which the applicant has given reply on 24.8.2015. After considering his reply, the res. no. 3 passed the impugned order on 26.12.2015 and imposed a punishment against the applicant. Admittedly the said order has been challenged by the applicant in appeal before the res. no. 2, the Divisional Commissioner, Nasik, but the same came to be rejected on 30.4.2016.

6. Learned Advocate for the applicant has submitted that the Deputy Commissioner (Supply), Nasik visited the Godown at Nardana with one Shri Tare and said Shri Tare had inspected the stock. He found no irregularity and informed the Deputy Commissioner (supply) accordingly, but the Deputy Commissioner informed wrongly regarding the shortage in the grain stock and on the basis of his report a departmental enquiry has been initiated against the applicant. He submitted that Shri Tare was examined

in the enquiry but the Deputy Commissioner, who submitted the report after inspection had not appeared before the Enquiry Officer. Only one witness namely Shri Bhagwat was examined during the course of the enquiry but said Shri Bhagwat admitted during the cross examination that he was not present when Deputy Commissioner inspected the stock. His evidence was on the basis of hearsay evidence and information and therefore the Enquiry Officer has arrived at conclusion that charges leveled against the applicant had not been proved. He has submitted that the disciplinary authority i.e. the Collector, Dhule disagreed with the findings of the Enquiry Officer. The disciplinary authority found that there is sufficient material available on record to prove the charges leveled against the applicant and therefore he issued a show cause notice to the applicant on 28.7.2015 to which the applicant has given reply on 24.8.2015. He has submitted that after considering his reply the res. no. 3 passed the impugned order on 26.12.2015 and imposed a punishment against the applicant. He has submitted that the disciplinary authority without recording his own reasoning and finding for disagreeing with the report of the Enquiry Officer as provided under rule 9 (2) of the M.C.S. (Discipline & Appeal) Rules, 1979 has passed the impugned order on 16.12.2015. He has submitted that there was no evidence to prove the charges leveled against the applicant but

the res. no. 3 had not considered the said aspect and passed the impugned order on 16.12.2015 illegally. He has submitted that the res. no. 2 has not considered the said aspect while considering the appeal of the applicant and dismissed the appeal of the applicant on 30.4.2016. He has submitted that the impugned order is not in accordance with the provisions of M.C.S. (Discipline & Appeal) Rules, 1979 and he therefore prayed to quash the same by allowing the present O.A.

7. Learned P.O. has submitted that on 15th & 16th February, 2012 the Deputy Commissioner (supply), Nasik Division, Nasik visited the Godown at Nardana. Admittedly during his inspection he noticed some irregularities i.e. shortage of grains. He has submitted that during the inspection, the Deputy Commissioner found that 1585 bags of wheat, 507 bags of rice were found uncertified, 525 grams of food grain were found short on an average and 15 bags of rice were found less quantity of 813 grams each. Therefore on the basis of his report the Enquiry has been initiated against the applicant. He has submitted that in spite of sufficient record & evidence the Enquiry Officer had wrongly held that charges are not proved against the applicant. Therefore the res. no. 3 disagreed with the findings of the Enquiry Officer and after recording the reasons passed the impugned order on the

basis of material placed on record. He has submitted that there is no illegality in the order of the Collector, Dhule. He has submitted that on the basis of the record, the res. no. 2 had decided the appeal and there is no illegality in the order passed by the res. no. 2 dismissing the appeal. Therefore, he supported both the impugned orders and prayed to reject the O.A.

8. On perusal of the report submitted by the Enquiry Officer in the departmental enquiry it appears that only one witness i.e. Shri Bhagwat, the then Supply Officer has been examined on behalf of the disciplinary authority. He has stated that on 15th & 16th February, 2012 the Deputy Commissioner, Nasik visited the Godown of which the applicant was in-charge and he noticed some irregularities i.e. shortage of grains. On the basis of his report a notice has been issued to the applicant on 31.1.2014 to which the applicant has given his reply on 13.2.2014. The res. no. 3 has found the explanation of the applicant unsatisfactory and therefore initiated a departmental enquiry against him in view of the provisions of rule 8 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. Only one witness namely Shri Bhagwat examined by the disciplinary authority had specifically admitted during the cross examination that he was not present when Deputy Commissioner inspected the stock. He deposed on

the basis of hearsay information. Therefore his evidence has not been accepted by the Enquiry Officer. Material witness Shri Raosaheb Bhagade, the then Deputy Commissioner (supply), Nashik had not appeared before the Enquiry Officer. Since no evidence has been adduced against the applicant, the Enquiry Officer had come to the conclusion that charges leveled against the applicant had not proved and therefore he submitted report accordingly to the disciplinary authority.

9. In view of provisions of rule 9(2) of M.C.S. (Discipline & Appeal) Rules, 1979 it is mandatory on the part of the disciplinary authority to record his own tentative reasons for disagreement with the report of the Enquiry Officer and forward the same to the Government servant against whom the charges are leveled and call his written representation in that regard. But in the present case the res. no. 3 i.e. Disciplinary Authority had not recorded the reasons for disagreement with the report of the Enquiry Officer. Without recording his own findings & reasons the disciplinary authority held that the applicant is guilty of the charges leveled against him. In fact as per the provisions of rule 9(2) of the M.C.S. (Discipline & Appeal) Rules, 1979 he has to record sound reasons for disagreement with the report of the enquiry on the basis of material and evidence placed before the Enquiry Officer. But no

such findings had been recorded by the res. no. 3. He simply observed that merely because the Deputy Commissioner (Supply), Nasik had not appeared before the Enquiry Officer the applicant cannot be exonerated. He simply relies on the report of the Deputy Commissioner (Supply) and passed the impugned order on 16.12.2015. In fact it was incumbent on the part of the res. no. 3 to give opportunity to the applicant to cross examine the Deputy Commissioner, who filed the report and on the basis of which enquiry has been initiated against the applicant. But the Deputy Commissioner (Supply) had not appeared before the Enquiry Officer and without giving opportunity to the applicant to cross examine the Deputy Commissioner, the disciplinary authority by relying on the report of the Deputy Commissioner had passed the impugned order dtd. 16.12.2015. The said act of the disciplinary authority is against the principles of natural justice and therefore the impugned order passed by the res. no. 3 imposing punishment on the applicant is not in accordance with the procedure laid down in the Rules. The said act on the part of res. no. 3 is in violation of rule 9(2) of the M.C.S.(Discipline & Appeal) Rules, 1979. Therefore, it requires to be quashed.

10. The res. no. 2 the Divisional Commissioner, Nasik had also not considered the said aspect while deciding the appeal of the applicant. He has not recorded the sound reasons while

upholding the order of res. no. 3 imposing punishment on the applicant. Therefore, the order dtd. 30.4.2016 passed by the res. no. 2 dismissing the appeal of the applicant is also not legal. Therefore it also requires to be quashed.

11. In view of the said facts the impugned order dtd. 16.12.2015 passed by the res. no. 3 and the order dtd. 30.4.2016 passed by the res. no. 2 are not legal and proper. Therefore, same require to be quashed and set aside by allowing the O.A. Since there was no sufficient material and evidence on record to prove the charges leveled against the applicant in the D.E., he requires to be exonerated on the basis of the report of the Enquiry Officer dtd. 26.6.2015.

12. In view of the discussions in the foregoing paras the O.A. is allowed. The order dtd. 16.12.2015 passed by the res. no. 3 imposing punishment of stoppage of one increment for two years on the applicant and the order dtd. 30.4.2016 passed by the res. no. 2 dismissing the appeal of the applicant and upholding the order of the res. no. 3 are hereby quashed and set aside and the applicant is exonerated from the charges leveled against him in the D.E. There shall be no order as to costs.

MEMBER (J)