

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 585 OF 2017  
(Subject – Pension and Pensionary Benefits/Minor Punishment)**

**DISTRICT : AURANGABAD**

**Shri Anandidas S/o Bhanudas Pande,** )  
Age : 62, Occu. : Nil (Retired), )  
R/o : F-6, Tirupati Park, Guru Sahani )  
Nagar, Cidco, N-4, Aurangabad. )

.. **APPLICANT**

**V E R S U S**

- 1) **The State of Maharashtra,** )  
Through Principal Secretary (Forests), )  
Revenue and Forest Department, )  
Mantralaya, Mumbai. )
- 2) **Principal Chief Conservator of )  
Forests (Head of Forest Force), )**  
PCCF (HOFF), “Van Bhavan”, )  
Ramgiri Road, Civil Line, Nagpur. )
- 3) **Principal Chief Conservator of )  
Forests and Director General, )**  
(PCCF & DGSF, Pune), Social )  
Forestry, Maharashtra State, )  
Central Building, Shivajinagar, )  
Pune 411 001. )
- 4) **Chief Conservator of Forests & )  
Silviculturist,** )  
(CCF & Silviculturist) “Van Bhavan”, )  
4<sup>th</sup> Floor, Gokhale Nagar, Pune. )
- 5) **Chief Conservator of Forests & )  
Deputy Director of General,** )  
(CCF & DDGSF) Social Forestry, )  
Plot No. 3, Ramdas Tower, )  
Kalpataru Housing Society, )  
Pundlik Nagar Road, Aurangabad.)

.. **RESPONDENTS**

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**APPEARANCE** : Shri S.P. Dhoble, Advocate holding for Shri  
S.B. Ghute, Advocate for the Applicant.

: Shri M.S. Mahajan, Chief Presenting Officer  
for the Respondents.

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**CORAM** : **B.P. PATIL, ACTING CHAIRMAN.**

**RESERVED ON** : **08.08.2019.**

**PRONOUNCED ON** : **22.08.2019.**  
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**ORDER**

1. The applicant has challenged the impugned order dated 23.12.2011 passed by the respondent No. 2 i.e. the PCCF (HOFF) Nagpur and the order dated 09.05.2017 passed by the Principal Secretary (Forest), Revenue and Forest Department, Mantralaya Mumbai, by filing the present Original Application. He has also sought declaration that the action of respondents regarding non- payment of all the pensionary benefits including pension to the applicant and/or withholding all the pensionary benefits of the applicant is illegal and to declare that he is entitled to get pensionary benefits and also prayed to direct the respondents to reconsider his appeal and to decide it afresh.

2. The applicant was initially appointed as Range Forest Officer in the Maharashtra Force Service on 04.01.1979. Accordingly, he joined the said post on 04.02.1979. On

23.01.2004, he has been promoted on the post of Assistant Conservator of Forests and posted as Assistant Director, Social Forestry Division, Yevatmal. Accordingly, the applicant joined the said post and worked there up to 31.12.2008 and thereafter, on 30.05.2008, the applicant has been transferred and posted as Assistant Conservator of Forests (Aireal Seed Sowing), Office of the Principal Chief Conservator, Nagpur. But he was not relieved by the S.F. Division, Yevatmal till 29.08.2008. Therefore, he has filed representation dated 29.08.2008 through proper channel stating difficulties for joining his new posting at Nagpur and also emphasizing on the exploitation made by the then Deputy Director, S.F. Division, Yeotmal along with other reasons and requested PCCF Nagpur not to relieve the applicant and not to transfer him out of Yevatmal district. Meanwhile, on 01.01.2009, he handed over the charge of the post of Yevatmal to as per the directions of the respondents. Though his representation dated 29.08.2008 is pending, on 01.01.2009, he was relieved from Yevatmal, but he could not able to join his duty due to his ill health and therefore, he informed the Principal Chief Conservator of Forests, Nagpur by the representation dated 24..01.2009 accordingly. Thereafter, on 10.02.2009, 24.02.2009, 24.03.2009, 12.06.2009, 24.08.2009, 15.12.2009 and 06.04.2010 he communicated to the office of

PCCF (HOFF), Nagpur, about his ill health and expressed his inability to join his duties. On 06.05.2010, the respondent No. 1 issued the order and placed the applicant under suspension for not joining the duties at Nagpur. The head-quarter of the applicant was kept at the office of PCCF (HOFF) Nagpur during the suspension period. The applicant ventilated his grievance to the Additional Chief Secretary (Forests) on 29.05.2010 and requested to cancel his suspension order. On 21.06.2010, he sent medical certificate for the period from 20.08.2009 to 05.01.2010 and 06.01.2010 up to 6 months to the Principal Chief Conservator, Nagpur and assured to join his service after his recovery. On 05.08.2010, the Principal Chief Conservator, Nagpur, issued communication to the applicant and directed him to join the post immediately, failing which he will be held responsible for the consequences of non-joining the post at Nagpur office. In response to the said communication, the applicant has filed application on 09.08.2010 and requested to the concerned that he is unable to join the duties due to his ill health. He has also requested to the concerned to change his headquarter and requested to post him at Aurangabad. On 18.09.2010, again he made representation to the Additional Chief Secretary (Forests) Revenue and Forest, Mantralaya and requested to cancel his suspension. Thereafter, the respondents

had issued the order revoking the suspension of the applicant and reinstated him in the service as Assistant Director, Social Forestry, Joint Director Office at Aurangabad, by the order dated 27.01.2011. It is his contention that no charge sheet was issued to him till that date. In view of the said order, he joined the posting at Aurangabad on 29.01.2011. On 07.06.2011, the respondent No. 2 i.e. the Principal Chief Conservator of Forests, Nagpur, through Social Forestry, Aurangabad issued charge sheet to the applicant. It is his contention that the charge of disobedience of Government order and thereby breach of provisions of Rule 3 of the Maharashtra Civil Services (Conduct), Rules, 1979 was leveled against him. The applicant has submitted his representation to the said memorandum on 27.08.2010. On 18.05.2011, the defence statement has been submitted by him through proper channel. It is his contention that no proper enquiry has been conducted in the Departmental Enquiry and no personal hearing was given to him. But the respondents passed the impugned order dated 23.12.2011 imposing punishment of withholding two annual increments temporarily without effecting his further increments and treated his suspension period as suspension period for all purposes.

4. It is contention of the applicant that he has challenged the said order before the respondent No. 1 by preferring an appeal on the ground that the said punishment was illegal. But the respondent No. 1 had not taken any decision on it and therefore, he approached the Government i.e. the Hon'ble Governor by preferring an appeal, but the Hon'ble Governor rejected his appeal on the ground that it was not maintainable and therefore, the applicant again sent reminder dated 3.9.2015, 17.07.2015, 29.12.2015 and 13.03.2016 to the respondent No. 1 for deciding his appeal. But there was no decision on it and therefore, he has filed O.A. No. 515/2016 before this Tribunal. This Tribunal allowed the said O.A. partially and directed the respondent No. 1 to decide the appeal dated 01.05.2012 preferred by him within two months. In pursuance of the said directions, the respondent No. 1 modified the impugned order passed by the respondent No. 2 on 23.12.2011 and pleased to withhold the increments payable to the applicant on 01.07.2012 till the period of his retirement and also treated the suspension period i.e. from 6.5.2010 to 27.1.2011 as suspension period for all purposes.

5. It is contention of the applicant that the respondent No. 1 was pleased to sanction his leave of 490 days i.e. from

01.01.2009 to 05.05.2010. It is his contention that the impugned orders are illegal and against the provisions of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. No opportunity of hearing was given to him and therefore, he approached this Tribunal and prayed to quash and set aside the impugned orders by filing the present Original Application.

6. The respondent Nos. 1 to 5 have filed their affidavit in reply and resisted the contentions of the applicant. It is their contention that the applicant is claiming pension, pensionary benefits and decision of leave proposal of 490 days in the present O.A. It is their contention that the applicant has also seeking interest on the delayed payment of pensionary benefits and also sought directions to decide his representations dated 29.12.2015 and 13.03.2016 within stipulated period. It is their contention that the applicant promoted on the post of DFO (Research) Jalna on 01.09.2012 and he retired on 28.02.2013. The applicant submitted his leave proposal related to the absence period from 01.01.2009 to 05.05.2010 i.e. 490 days to the CCF and Deputy Director General Social Forestry, Aurangabad on 22.02.2013. It is their contention that the applicant retired on 28.02.2013. As per the Rule 118 to 125 of the Maharashtra Civil Services (Pension) Rules, 1982, the

procedure related to pension case was required to be completed by the respondent No. 5. The applicant was absent from duty from 01.01.2009 to 05.05.2010 i.e. for 490 days, but he has submitted the application for leave on 29.01.2011. He was responsible for delay in not processing his pension papers. It is their contention that the applicant was transferred from the post of Assistant Director, Social Forestry, Yevatmal to the post of Assistant Conservator of Forests, PCCF, Nagpur and accordingly, he was relieved from Yevatmal on 01.01.2009, but he had not joined his new posting after availing the admissible joining period. He has been suspended with immediate effect vide the order dated 06.05.2010. The Government has directed to the Principal Chief Conservator of Forests, M.S., Nagpur to initiate departmental enquiry against the applicant for his misconduct in view of the Rule 10 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 by the order dated 18.05.2011. After completion of enquiry, the Principal Chief Conservator of Forests, M.S. Nagpur, passed the order imposing punishment on the applicant. On 23.12.2011, the applicant has challenged the said order by preferring an appeal before the Government of Maharashtra. In the appeal order was modified by the order dated 9.5.2017 and increment of the applicant due on 01.07.2012 is withheld for seven months i.e. from



01.07.2012 to 31.01.2013 and his suspension period from 06.05.2010 to 27.01.2011 is treated as suspension period for all purposes. It is their contention that thereafter No dues and No Enquiry certificate was issued on 30.10.2017 by the respondent No. 2. The applicant was given provisional pension for the period from 01.03.2013 to 31.08.2013 and thereafter, the Accountant General-II, Nagpur has granted extension to the provisional pension for the further period from 01.09.2013 to 28.02.2014. Thereafter, no further sanction was given to the provisional pension in view of the provisions of Rule 126 of the Maharashtra Civil Services (Pension) Rules, 1982. The applicant was promoted from the post of Assistant Conservator of Forests to the post of Divisional Forest Officer and joined to the place of promotion on 01.09.2012. The applicant was promoted, when he had undergone punishment. The pay fixation with reference to the promotion of the applicant has not been done and therefore, pay fixation is not done as a result last pay for pension case is not decided. The issue has been referred to the Finance Department and after receiving the directions; his pension case will be finalized. It is their contention that the absentee period of the applicant has been decided by the Government by the letter dated 03.05.2017 and accordingly all pay benefits in respect of the said period has been given to the

applicant. It is their contention that the applicant remained absent on duty for prolonged period without reasonable ground. Therefore, enquiry has been initiated against him and he was found guilty of the charges levelled against him. Therefore, penalty has been imposed for his misconduct. The enquiry is stated in view of the provisions of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 and there is no illegality in it. It is their contention that the respondent No. 1 has rightly decided the appeal of the applicant by recording reasons and therefore, they supported the impugned orders.

7. The applicant has filed rejoinder affidavit and resisted the contentions raised by the respondent Nos. 1 to 5 in their affidavit in reply. He has contended that the impugned orders have been issued without following the provisions of Rules and therefore, he has prayed to quash and set aside the impugned orders.

8. The respondent Nos. 1 to 5 have filed sur-rejoined to the rejoinder affidavit filed by the applicant and raised the similar contentions to that of the contentions raised in their affidavit in reply and prayed to reject the present Original Application.

9. I have heard Shri S.P. Dhoble, learned Advocate holding for Shri S.B. Ghute, learned Advocate for the applicant and Shri M.S. Mahajan, learned Chief Presenting Officer for the respondents. I have perused the documents placed on record by both the parties.

10. Admittedly, the applicant was initially appointed as Range Forest Officer in the Maharashtra Forest Service on 04.01.1979 and he has joined the said post on 04.02.1979. Admittedly, on 23.01.2004, he was promoted on the post of Assistant Conservator of Forests and posted as Assistant Director, Social Forestry Division, Yevatmal. He joined the said posting on 31.12.2008. On 30.05.2008, he has been transferred and posted as Assistant Conservator of Forests (Aireal Seed Sowing) in the office of the Principal Chief Conservator, Nagpur. Admittedly, he has handed over the charge of the said post on 01.01.2009, but he had not joined his new posting in the office of the Principal Chief Conservator, Nagpur. Admittedly, the applicant avoided to join his new posting from 01.01.2009 to 05.05.2010 on account of his ill health. Admittedly, on 06.05.2010, he was placed under suspension by the order issued by the respondent No. 1. Admittedly, his suspension has been revoked on 27.01.2011

and he has been reinstated in the service and posted in the office of Social Forestry, Joint Director, Aurangabad as Assistant Director. Accordingly, he joined the said posting on 29.01.2011. Admittedly, the applicant was promoted on the post of Divisional Forest Officer and posted as DFOC Research Jalna by the order dated 31.08.2012. Admittedly, the applicant retired on 28.02.2013 on attaining the age of superannuation. Admittedly, meanwhile the memorandum of charge was issued to the applicant and D.E. was initiated against him. The applicant has filed his written statement of defence to the charges leveled against him. After considering his reply, the respondent No. 2 has passed the order and imposed the punishment on the applicant on 23.12.2011 and withheld his two annual increments permanently and treated the suspension period as suspension period for all purposes. The applicant has preferred an appeal against the said order before the respondent no. 1 and it was decided by the impugned order dated 09.05.2017, in which the order of respondent No. 2 has been modified and one increment of the applicant has been withheld for the period with effect from 01.07.2012 to 28.02.2013 and his suspension period be treated as suspension period for all purposes.

11. Learned Advocate for the applicant has submitted that the respondents have passed the impugned orders imposing punishment on the applicant, but the said punishment is disproportionate to the charges levelled against the applicant. He has submitted that the applicant remained absent during the period from 01.01.2009 to 05.05.2010 because of his ill health. He has argued that the applicant informed the concerned authority about his ill health from time to time, but the said aspect has not been considered by the respondents and they have punished the applicant without following the provisions of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. He has submitted that the appellate authority and the revisional authority had also not considered the above said aspect and grounds raised by the applicant in his appeal and revision. He has submitted that due to punishment imposed on the applicant, financial and irreparable loss has been caused to him and therefore, he has prayed to allow the present Original Applicant and prayed to quash and set aside the impugned orders.

12. Learned Chief Presenting Officer has submitted that the applicant has been transferred on 30.05.2018 and posted as Assistant Conservator of Forests (Aireal Seed Sowing) in the

Office of the Principal Chief Conservator, Nagpur. But he has not joined the said post, though he was relieved from his earlier posting i.e. from Yavatmal on 01.01.2009. He has submitted that the applicant remained absent on duty unauthorizely because of his transfer. He has argued that in spite of the several directions given by the respondents, the applicant had not joined his duty at Nagpur and therefore, he was suspended by the respondents on 06.05.2010 and thereafter, D.E. has been initiated against him for disobeying the Government orders and misconduct in view of the provisions of the Maharashtra Civil Services (Conduct) Rules, 1979. He has submitted that the opportunity of hearing was given to the applicant. The applicant has not given satisfactory explanation about his absence and charges levelled against him and therefore, disciplinary authority i.e. the respondent No. 2 has passed the order dated 23.12.2011 and stopped his two annual increments and treated suspension period as it is. He has argued that the order passed by the respondent No. 2 is in accordance with the provisions of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 and there is no illegality in it. He has submitted that the applicant has challenged the said order by preferring an appeal before the respondent No. 1 and the respondent No. 1 had decided the said appeal on 09.05.2017 and modified the

order passed by the respondent No. 2 on 23.12.2011. The respondent No. 1 withheld one increment of the applicant, which is due on 01.07.2012 for the period from 01.07.2012 to 31.01.2013 and treated the suspension period as it is. He has submitted that the respondent No. 1 has considered the date of retirement of the applicant and therefore, he modified the punishment imposed by the respondent No. 2 while deciding the appeal preferred by the applicant. He has submitted the respondent No. 1 has passed the impugned order in the appeal of the applicant considering seriousness of the charges and misconduct of the applicant and there is no illegality in it and therefore, he has supported the decision of the respondent Nos. 1 and 2.

13. On perusal of the record, it reveals that on 30.05.2008, the applicant has been transferred from Yavatmal and posted in the office of the Principal Chief Conservator of Forests, Nagpur on the post of Assistant Conservator of Forests (Aerial Seed Sowing). The applicant relieved from the post of Assistant Director, Social Forestry Division, Yavatmal on 01.01.2009, but the applicant avoided to joined his new posting. The applicant remained absent from duty for the period from 01.01.2009 to 05.05.2010. As the applicant has not obeyed the

orders of his superior authority and the transfer order issued by the Government, he has been placed under suspension w.e.f. 06.05.2010 and the D.E. has been initiated against him. The suspension order of the applicant has been revoked on 27.01.2011 and thereafter, he has been reinstated in service and posted as Assistant Director in the office of Social Forestry, Joint Director Office, Aurangabad. Accordingly, the applicant joined the said posting on 29.01.2011. On receiving the memorandum of charge, the applicant has given reply to it and stated that he could not able to obey the order of transfer because of his illness and he had informed the said fact to his superior authority. After considering the explanation/reply of the applicant, the respondent No. 2 came to the conclusion that the applicant intentionally and deliberately avoided to joined his new posting and he remained absent on duty unauthorizely and therefore, he punished the applicant and passed the impugned order dated 23.12.2011. The applicant has challenged the said order before the respondent No. 1 by preferring an appeal. The respondent No. 1 considered the grounds raised by the applicant in the appeal and after considering the punishment imposed on the applicant by the respondent No. 2, he found that the punishment cannot be executed because of retirement of the applicant on 28.02.2013 and therefore, he modified the



order of punishment imposed by the respondent No. 2 and ordered to withhold one increment of the applicant, which is due of 01.07.2012 for the period commencing from 01.07.2012 to 31.01.2013 i.e. for the period of seven months. He has maintained the order of respondent No. 2 treating the suspension period as it is. The respondent No. 1 recorded the reasons while deciding the appeal of the applicant. The respondent No. 2 imposed the proportionate and appropriate punishment on the applicant considering the charges levelled against him. The record shows that the applicant remained absent from duty for the period of 490 days on the ground of his illness, when he has been transferred from Yavatmal to Nagpur. The said fact shows that there was dereliction of duty by the applicant and it amounts misconduct and therefore, the respondent Nos. 1 and 2 held him guilty of the charges levelled against him and they have passed the impugned orders. Therefore, I found no illegality in the impugned orders passed by the respondent Nos. 1 and 2 and therefore, no interference in the impugned orders is called for in it.

14. Learned Advocate for the applicant has submitted that the respondents had passed the order and regularized his leave period, but the respondents had not considered the said

aspect while passing the impugned orders. But on going through the record, it reveals that the respondents have passed the order regularizing the absence of the applicant after passing the impugned orders and therefore, it cannot be said that the respondents had not considered the said aspect while imposing the punishment on the applicant. Therefore, I do not find substance in the submissions advanced by the learned Advocate for the applicant in that regard.

15. Considering the above said facts, in my view, the punishment imposed on the applicant for his misconduct is in accordance with the provisions of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 and the punishment imposed against him is proportionate to the charges levelled against him. The principles of natural justice have been followed by the respondent Nos. 1 and 2 while conducting the D.E., imposing punishment and while passing the order in the appeal. The opportunity of hearing was given to the applicant and therefore, in my view, there is no illegality in the impugned orders. Hence, no interference is called for in it. There is no merit in the present O.A. Consequently, the O.A. deserves to be dismissed.

16. In view of the discussions in the foregoing paragraphs, the Original Application stands dismissed with no order as to costs.

**PLACE : AURANGABAD.**  
**DATE : 22.08.2019.**

**(B.P. PATIL)**  
**ACTING CHAIRMAN**

**KPB** S.B. O.A. No. 585 of 2017 BPP 2019 Pension and Pensionary benefits/Minor Punishment