

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 641 OF 2021

DISTRICT : AHMEDNAGAR

Nilesh S/o. Vitthal Salunke,)
Age : 34 years, Occu. : Service as a Talathi,)
R/o. Mahi, Tq. Karjat, Dist. Ahmednagar.)

.. **APPLICANT**

V E R S U S

1. District Collector,)
Ahmednagar District, Ahmednagar.)
2. The Sub Divisional Officer,)
Karjat Sub Division, Karjat,)
Dist. Ahmednagar.)
3. The Tahsildar,)
Tahsil Office, Karjat, Tq. Karjat,)
Dist. Ahmednagar.)

.. **RESPONDENTS**

APPEARANCE : Shri Gajanan Kadam, Advocate for the
Applicant.

: Shri I.S. Thorat, P.O. for the Respondents.

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

Reserved on : **20.01.2023**

Pronounced on : **01.03.2023**

O R D E R

(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 dated 03.02.2020 (Annexure A-1) issued by the respondent No. 2 i.e. the Sub-Divisional Officer, Karjat, Dist. Ahmednagar, thereby imposing punishment upon the applicant of withholding of two annual increments with cumulative effect and consequently seeking direction to pay arrears of difference to the applicant, which are occurred due to stoppage of two increments with cumulative and permanent effect.

2. The facts in brief giving rise to this application can be stated as follows :-

(a) The applicant is working as Talathi at Talathi Office, Mahi, Tq. Karjat, Dist. Ahmednagar. The respondent No. 2 issued show cause notice to the applicant on 02.01.2020 (Annexure A-2) alleging that while taking the mutation entry, the applicant has committed breach of provisions of Maharashtra Land Revenue Code. The applicant submitted his reply dated 06.01.2020 (Annexure A-3) thereby clarifying that due to technical difficulty, he could not take mutation entry by using online E-mutation system. However, due to continuous insistence of the account holders, said mutation entry was taken from order and document type system. It would be further clarified that

legal heir mutation entry No. 3106 was mutated only after the sanction of Circle Officer and by serving the notices to the concerned parties.

(b) It is further contended that the impugned order of punishment dated 03.02.2010 (Annexure A-1) is illegal, erroneous and arbitrary and against the principles of natural justice and fair play. The said impugned punishment is major punishment, which cannot be imposed without holding D.E. as per the settled principle of law.

(c) Being aggrieved and dissatisfied with the order dated 03/02/2020 passed by the No. 2, the applicant filed appeal dated 11.03.2020 (part of Annexure A-4 collectively) under Rule 17 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 before the respondent No. 1, however, till the date no heed is given to decide the same. Therefore, the applicant is constrained to approach this Tribunal.

3. The affidavit in reply is filed on behalf of respondent Nos. 1 to 3 by one Shri Nanasaheb S/o Shripati Agale working as Tahsildar, Karjat, Dist. Ahmednagar, thereby he denied all the adverse contentions raised in the present Original Application. It

is denied that the impugned punishment was imposed without considering the reply submitted by the applicant. In fact, the applicant recorded mutation entry without having any order or document for recording such mutation entry. Hence, the applicant committed misconduct. While taking mutation entry, the applicant acted in contravention of breach of Maharashtra Land Revenue Code and its provisions. The applicant was given fair opportunity to explain his misconduct. Hence, the impugned punishment is legal and proper. Therefore, the O.A. is liable to be dismissed.

4. We have heard the arguments advanced by Shri Gajanan Kadam, learned Advocate for the applicant on one hand and Shri I.S. Thorat, learned Presenting Officer for the respondents on the other hand.

5. After having considered the rival pleadings and submissions, it is seen that the short question which falls for our consideration in this Original Application is that as to whether the impugned punishment of stoppage of two annual increments with cumulative effect upon the applicant is major punishment or minor punishment within the meaning of Rule 5 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979

and accordingly what procedure is contemplated for conducting the Departmental action against the applicant.

6. Rule 5 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, is as follows :-

“5. Penalties.-(1) *Without prejudice to the provisions of any law for the time being in force, the following penalties may, for good and sufficient reasons and as hereinafter, provided, be imposed on a Government servant, namely –*

Minor Penalties –

- (i) Censure;*
- (ii) Withholding of his promotion;*
- (iii) Recovery from his pay of the whole or part of any pecuniary loss caused by him to Government, by negligence or breach of orders;*
- (iv) Withholding of increments of pay;*
- (v) reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;*
- (vi) reduction to a lower time-scale of pay, grade, post or service which shall be a bar to the promotion of the Government servant during such specified period to the time-scale of pay, grade, post, or service from which he was reduced, with direction as to whether or not, on promotion on the expiry of the said specified period,-*
 - (a) the period of reduction to time scale of pay, grade, post or service shall operate to further increments of his pay, and if so, to what extent; and,*
 - (b) the Government shall regain his original seniority in the higher time-scale of pay, grade, post or service;]*

Major Penalties –

(vii) *compulsory retirement;*

(viii) *removal from Service which shall not be a disqualification for future employment under Government;”*

In view of above, withholding of increments of pay discussed in clause (iv) falls under the category of minor penalties. However, in this regard, learned Advocate for the applicant placed reliance on citation of the Hon'ble High Court of Bombay, Bench at Nagpur in the matter of **Nilkanth Dhyanoba Jogdande and Ors. Vs. Panjabroa Deshmukh Krishi Vidyapeeth in W.P. Nos. 425 and 541 of 2018** decided by common judgment and order dated 23.07.2019. In the said decision, the citation of the Hon'ble Apex Court in the case of **Punjab State Electricity Board, Now Punjab State Power Corporation Ltd. Vs. Raj Kumkar Goel**, reiterating the view taken in the case of **Uttam Kumar Vs. Delhi Jal Board**, reported in **2001 (4) S.C.T. 136** is recorded. As per the said citation, the Hon'ble Apex Court has held that when increment is withheld without cumulative effect, it is in the realm of minor penalty and when it is done with cumulative effect, it could be in the compartment of major penalty.

7. Learned Advocate for the applicant further placed reliance on the decision of the Hon'ble Supreme Court of India in **Civil**

Appeal No. 2960 of 1987 in the matter of **Kulwant Singh Gill Vs. State of Punjab**. In the said citation case, the appellant (Food Inspector) alleged to have purchased sub-standard wheat. In view of that charge sheet was served upon him for misconduct. The appellant was allowed to file. However only after considering the said explanation and without conducting D.E. in accordance with Rules 8 and 9 of the Maharashtra Civil Services (Punishment and Appeal) Rules, 1970 punishment was imposed upon the applicant of stoppage of two increments with cumulative effect treating as minor penalty. It was held that the said punishment is major penalty and imposition of the impugned penalty without enquiry is per se illegal. Hence, it was set aside.

8. Learned Advocate for the applicant further placed reliance on the decision of the Hon'ble Supreme Court dated 05.09.2007 in **Civil Appeal Nos. 4041-4042 of 2007 (Arising out of SLP (C) Nos. 14853-14854 of 2005)** in the matter of **M.P. State Agro Industries Development Coporation Ltd. and Ors. Vs. Jahan Khan**. In the said citation also it is held that withholding of increments with cumulative effect is treated as a major penalty because it has a perpetual effect on the entire tenure of service of the employee.

9. Learned Presenting Officer submitted that in the case in hand proper opportunity was given to the applicant for giving reply to the show cause notice and after considering the same, the impugned punishment is imposed.

10. However, considering the ratio in the citations relied upon by the learned Advocate for the applicant, it is evident that withholding of two annual increments with cumulative effect is falling in the compartment of major punishment and it would not be minor punishment as contemplated under Rule 5 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. In view of that following procedure of holding Departmental Enquiry as contemplated under Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 would be mandatory. Rule 8 of the said Rules lays down procedure for imposing major penalties, which is by way of serving charge-sheet upon the applicant, seeking written statement, examining witnesses, proving documents etc. The said procedure is not followed before imposing the impugned punishment upon the applicant. In view of the same, the impugned order of punishment is liable to be quashed and set aside. We, therefore, proceed to pass the following order :-

ORDER

The Original Application is allowed in following terms :-

- (A) The impugned order of punishment dated 03.02.2020 (Annexure A-1) imposed upon the applicant issued by the respondent No. 2 i.e. the Sub-Divisional Officer, Karjat, Dist. Ahmednagar is hereby quashed and set aside.
- (B) The respondent authorities are directed to pay the arrears of difference to the applicant, which have accrued due to stoppage of two annual increments with cumulative effect within a period of three months from the date of this order.
- (C) There shall be no order as to costs.

MEMBER (A)**MEMBER (J)****Kpb/D.B. O.A. No. 501/2020 VDD & BK 2023 Selection/Appointment**