

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 707 OF 2015
(Subject – Reinstatement)**

DISTRICT : AHMEDNAGAR

Shri Lahu Rama Dhage,)
Age : 49 years, Occu. : Nil)
r/o Kumbharwada, Akole,)
Tq. Akole, Dist. Ahmednagar.)
.. **APPLICANT**

VERSUS

1) **The State of Maharashtra,**)
Through Secretary,)
Revenue and Forest Department,)
Mantralaya, Mumbai.)

2) **The Divisional Commissioner,**)
Nashik Division, Nashik.)

3) **The Collector, Ahmednagar,**)
Dist. Ahmednagar.)
.. **RESPONDENTS**

APPEARANCE : Shri A.D. Gadekar, Advocate for the Applicant.

: Shri I.S. Thorat, Presenting Officer for the Respondents.

CORAM : **B.P. PATIL, ACTING CHAIRMAN.**
AND
P.N. DIXIT, VICE CHARIMAN.

RESERVED ON : **13.11.2019.**

PRONOUNCED ON : **16.11.2019.**

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

ORDER

1. The applicant has challenged the order passed by the respondent No. 3, by which he was made to retire compulsorily from the service on the basis of the order passed by the respondent No. 1 on 16.09.2014 in the Revision/Review petition filed by the applicant challenging the order passed by the respondent No. 2 in the appeal confirming the decision of the respondent No. 3 imposing punishment of dismissal from the service in the Departmental Enquiry (DE) by filing the present Original Application.

2. The applicant belongs to S.C. category. He has passed SCC examination. He has been appointed on Class-IV post in Revenue Department by the order dated 09.10.1989 and accordingly, he was posted in Tahsil Office, Karjat, Dist. Ahmednagar. In the year 1996, he was promoted on the class III post i.e. on the post of Clerk and posted in Tahsil Office, Pathardi, Dist. Ahmednagar. In the year 2005, he has been transferred to Akole Tahsil Office, Dist. Ahmednagar and thereafter, he was transferred to Jamkhed, Dist. Ahmednagar. On 29.05.2013, a D.E. was initiated against him alleging that he remained absent without prior permission of the higher authority from 07.04.2008 to 31.01.2009 and from 11.01.2010 to

12.01.2010 and he made overwriting in the muster roll and put his signature showing that he was present in the office on 08.01.2008, 01.07.2009, 26.06.2009 and 30.06.2009. It is further alleged that on 23.07.2009 and 14.08.2009 he left the office at 1.00 pm and 2.00 pm respectively without permission. It is further allegation against him that while serving in Supply Branch he had accepted Rs. 200/- from one Shri Rama Dhondiram Sathe for issuance of Ration Card, but he had not issued the Ration Card to him. The applicant has submitted his reply to the above said charges. As his reply was not satisfactory, the disciplinary authority appointed the enquiry officer to conduct the D.E. The enquiry officer conducted the enquiry and submitted his report to the respondent no. 3. On the basis of report of the enquiry office, the respondent No. 3 issued a notice to the applicant on 01.11.2012 to show cause as he why he should not be removed from the service, as the charges have been proved against him. It is contention of the applicant that the report of enquiry had not been supplied to him along with the show cause notice. It is his contention that he had given reply to the said show cause notice on 18.01.2013 and denied the charges levelled against him. The respondent No. 3 passed the order thereafter on 22.04.2013 and imposed punishment of removal of the applicant from the service. Being aggrieved by the

said order, the applicant had preferred an appeal before the Divisional Commissioner, Nashik. He has filed written arguments in the appeal. The Divisional Commissioner, Nashik after considering the report and arguments filed by him passed the order in the appeal on 16.11.2013 and rejected the same. Against the said order, the applicant has filed Revision/Review petition before the respondent No. 1. The respondent No. 1 passed the order in the Revision/Review Petition and partly allowed the same by the order dated 16.09.2014 and modified the order of punishment imposed on him and passed the order of compulsory retirement of the applicant from the service instead of removal from the service. On the basis of the said decision in the Revision/Review Petition by the respondent No. 1, the respondent No. 3 issued the impugned order dated 19.12.2014, by which the applicant was made to retire compulsory from the service. The applicant has challenged the said order by filing the present Original Application. It is his contention that the Disciplinary authority, appellate authority and the reviewing authority had not considered the enquiry report properly. It is his contention that the enquiry officer had not given an opportunity of hearing to him. There was no sufficient evidence to prove the charges levelled against him. The enquiry officer has wrongly relied on the evidence adduced by the disciplinary

authority. It is his contention that in the absence of sufficient evidence, the enquiry office has wrongly held him guilty of the charges levelled against him and on the basis of the report of the enquiry officer, the respondent No. 3 has passed the order of dismissal from the service. It is his contention that the appellate authority i.e. the respondent No. 2, as well as, the reviewing authority had not considered the evidence on record properly and committed an error in passing the impugned orders. It is his contention that on the basis of the evidence available on record in the D.E., he ought to have been exonerated, but the respondent Nos. 1 to 3 had not considered the said aspect and passed the impugned orders. Therefore, he has challenged the impugned order by filing the present Original Application.

3. The respondent Nos. 1 to 3 have filed their affidavit in reply and resisted the contentions of the applicant. They have no dispute about the fact regarding initial appointment of the applicant on class IV post and thereafter, promotion on the post of class III post. They have admitted the fact that on 29.05.2010 memorandum of charges along with the copy of the charge sheet has been issued to the applicant, to which the applicant had given his reply and denied the charges levelled against him. As the reply filed by the applicant was not satisfactory, the enquiry

officer has been appointed to conduct the enquiry against the applicant. The Enquiry Officer conducted the enquiry after giving an opportunity of hearing to the applicant and recorded findings and thereafter submitted his report to the respondent No. 2 on 15.5.2012. Thereafter, the respondent No. 3 issued the show cause notice to the applicant on 01.11.2012, to which the applicant had given reply on 18.01.2013. In the reply, the applicant nowhere stated that the copy of the enquiry report along with the show cause notice dated 01.11.2012 had not been given to him. It is their contention that the copy of the report of the enquiry officer was supplied to the applicant along with show cause notice. It is their contention that after considering the reply of the applicant, the respondent No. 3 had passed the order dated 22.04.2013 imposing the punishment of removal of the applicant from the service. The applicant has preferred an appeal against the said order before the respondent No. 2 and the respondent No. 2 dismissed the appeal on 16.11.2013. The applicant has challenged the said order before the higher authority by filing Revision/review Petition, but the same came to be allowed partly on 16.09.2014 and order of removal of the applicant from the service was modified and punishment of compulsory retirement of the applicant from the service was imposed. On the basis of the said order, the respondent No. 3

issued the order dated 19.12.2014. It is their contention that the said orders came to be passed on the basis of evidence recorded in the disciplinary enquiry and the orders have been passed after following the due procedure of law and in view of the provisions of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. There is no illegality in the impugned orders and therefore, they supported the same and prayed to dismiss the present Original Application.

4. We have heard Shri A.D. Gadekar, learned Advocate for the applicant and Shri I.S. Thorat, learned Presenting Officer for the respondents. We have perused the documents placed on record by both the parties.

5. Admittedly, the applicant was initially appointed on Class IV post in Revenue Department by the order dated 09.10.1989 and posted in Tahsil Office, Karjat, Dist. Ahmednagar. Thereafter, he was promoted on the class III post in the year 1996 and posted as Clerk in Tahsil Office, Pathardi, Dist. Ahmednagar. Thereafter, he has been transferred to Akole Tahsil Office, Dist. Ahmednagar and then to Jamkhed, Dist. Ahmednagar. There is no dispute about the fact that the respondent No. 3 issued memorandum of charge to the applicant

on 29.05.2013, alleging that the applicant remained absent without prior permission of the higher authority during the period from 07.04.2008 to 31.01.2009 and from 11.01.2010 to 12.01.2010 and made overwriting in the muster roll by putting his signature showing that he remained present in the office on 08.01.2008, 01.07.2009, 26.06.2009 and 30.06.2009. It is further alleged that the applicant left the office at 1.00 pm and 2.00 pm on 23.07.2009 and 14.08.2009 respectively without permission. It is further allegation that while serving in Supply Branch he had accepted Rs. 200/- from one Shri Rama Dhondiram Sathe on 18.01.2010 for issuance of Ration Card, but he had not given Ration Card to him. The applicant had given reply to the memorandum of charges. But the respondent No. 3 found that the reply was not satisfactory and he initiated the D.E. and therefore, appointed the enquiry officer. The Enquiry Officer conducted the enquiry and submitted his report to the respondent No. 3 holding the applicant guilty of the charges levelled against him. On the basis of report of the enquiry office, the respondent No. 2 issued notice to the applicant on 01.11.2012 to show cause as to why he should not be removed from the service, to which the applicant has given reply 18.01.2013. On 22.04.2013 the respondent No. 3 passed the order and imposed the punishment of removal of the

applicant from the service. The applicant has challenged the said order by preferring an appeal before the Divisional Commissioner, Nashik i.e. the respondent no. 2, but the said appeal came to be dismissed on 16.11.2013. The applicant has challenged the said order by filing Revision/Review petition before the respondent No. 1 and the said Revision/Review Petition came to be allowed partly on 16.09.2014 and punishment of removal from service imposed on the applicant had been modified and the applicant was made to retire compulsorily. On the basis of the said order, the respondent No. 3 issued order dated 19.12.2014.

6. Learned Advocate for the applicant has submitted that neither the Disciplinary authority nor the appellate and reviewing authorities verified the record in the D.E. properly. They have not appreciated the evidence on record with proper perspective and therefore, they had arrived at a wrong conclusion holding the applicant guilty for the charges levelled against him. He has submitted that the enquiry officer had also not appreciated the evidence properly and he had recorded wrong findings. He has argued that none of the charges levelled against the applicant has been proved, but the concerned authorities have wrongly arrived at a conclusion that the charges have been

proved against the applicant and consequently, they have passed the orders imposing punishment on the applicant. He has submitted that the enquiry had not been conducted in view of the provisions of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 and therefore, he has prayed to quash and set aside the impugned orders and to exonerate the applicant by allowing the present Original Application.

7. Learned Presenting Officer has submitted that the enquiry officer has conducted the enquiry as per the procedure laid down in the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. The opportunity of hearing has been given to the applicant and the applicant had given reply to the notice issued by the respondent No. 3. Thereafter, he appeared before the enquiry officer and he participated in the enquiry initially, but thereafter he remained absent. The enquiry officer on the basis of the evidence on record arrived at a conclusion that the charges levelled against the applicant have been proved and thereafter, he recorded his findings accordingly by recording reasons and submitted his report. The disciplinary authority i.e. the respondent No. 3 accepted the report and issued show cause notice to the applicant. The applicant had filed reply to the show

cause notice and thereafter, the respondent No. 3 passed the order removing the applicant from the service.

8. Learned Presenting Officer has further submitted that the applicant has challenged the said order before the appellate authority i.e. the respondent No. 2 and the respondent No. 2 had also given an opportunity of hearing to the applicant and thereafter dismissed the same. The applicant has challenged the said order before the respondent No. 1 by filing revision/review application. The respondent No. 1 decided the same after giving an opportunity of hearing to the applicant and allowed the revision/review partly and modified the order of punishment. He has submitted that all these facts show that the proper and fair opportunity of hearing had been given to the applicant and the applicant was permitted to defend himself. The applicant had appeared in the enquiry initially, but thereafter remained absent. Therefore, the enquiry proceeded in his absence. He has submitted that the principles of nature justice have been followed by the respondent Nos. 1 to 3 while imposing the punishment and there is no violation of principles of natural justice and the provisions of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. He has submitted that considering the nature of charges levelled against the applicant, the respondent

No. 3 passed the order and imposed the punishment, which is in proportionate to the charges levelled against him. Not only this, but the respondent No. 1 while allowing the revision/review partly, considered the said aspect and modified the punishment by taking lenient view and imposed punishment of compulsory retirement of the applicant, instead of removal from the service. He has submitted that there is no illegality in the orders passed by the respondent Nos. 1 to 3 and therefore, no question to interfere in the same arises and therefore, he has prayed to reject the present Original Application.

9. On going through the documents on record, it is crystal clear that the applicant remained absent for considerable period without obtaining prior permission from his superior officer. Moreover, he made overwriting in the muster roll and put his signature to show that he was present in the office on some of the days. Not only this, but he accepted Rs. 200/- illegally from one person on account of issuance of ration card, but he had not given ration card to that person. Moreover, the applicant left the office on some occasions without obtaining prior permission from his superior authorities in the afternoon session. All these facts constitute misconduct on the part of the applicant and therefore, memorandum of charge was issued to

the applicant by the respondent No. 3, to which the applicant had given his reply. As his reply was not satisfactory, the respondent No. 3 initiated D.E. and the enquiry officer has been appointed. The enquiry officer conducted the enquiry. The applicant had appeared before the enquiry officer initially, but thereafter, he remained absent. The enquiry officer recorded statement of the witnesses and verified the documents produced by the disciplinary authority. He has recorded the statement of the applicant also and thereafter, submitted his report. On considering the evidence and documents on record, he held that the charges levelled against the applicant have been proved and therefore, submitted the report to the respondent No. 3 accordingly. The respondent No. 3 accepted the report and issued the show cause notice to the applicant, before imposing the punishment. The applicant had given reply to the said show cause notice. Thereafter, the respondent No. 3 passed the order and imposed the punishment of removal of the applicant from the service. The record shows that the copy of the enquiry report has been served/supplied on the applicant along with the show cause notice. The applicant has never raised his grievance regarding non supply of the copy of the enquiry report to him in the reply to the show cause notice nor in the appeal preferred by him before the respondent No. 2. Therefore, the said fact falsifies

the contention of the applicant in that regard. The applicant has challenged the order passed by the respondent No. 3 before the respondent No. 2 by preferring an appeal. The respondent No. 2 had also given an opportunity of hearing to the applicant and thereafter, dismissed the appeal. The applicant has challenged the said order before the respondent No. 1 by filing Revision/Review Petition. The respondent No. 1 had also given an opportunity of hearing to the applicant and thereafter, allowed the Revision/Review petition partly and modified the punishment imposed on him. All these facts show that the principles of natural justice have been followed by the respondent Nos. 1 to 3 while deciding the D.E., appeal and revision/review petition. They have followed the procedure laid down in the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. They appreciated the evidence recorded in the D.E. and passed the orders accordingly. There is no illegality in the orders. The order of punishment has been passed by the respondent No. 1 after considering the seriousness of the charges and misconduct of the applicant. The punishment imposed by the respondent No. 1 is proportionate to the charges levelled against the applicant and therefore, no interference is called for in the impugned order. Hence, we find no merit in the present Original Application. Consequently the O.A. deserves to be dismissed.

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

(P.N. DIXIT)
VICE CHAIRMAN

(B.P. PATIL)
ACTING CHAIRMAN

PLACE : AURANGABAD.

DATE : 16.11.2019.

KPB D.B. O.A. No. 707 of 2015 BPP 2019 Reinstatement