

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 851 OF 2016
DISTRICT : AURANGABAD**

Jagdish s/o Balaram Pardeshi,)
Age : 65 years, Occu. : Nil,)
R/o : 10, Gajraj Nagar, N-8, P-4, Cidco,)
Aurangabad.).. **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through its Secretary,)
Cooperative, Marketing & Textile,)
Mumbai-32.)
2. **The Commissioner for Cooperation &)
Registrar of Cooperative Societies,**)
M.S., Pune.)
3. **The Divisional Joint Registrar,**)
Cooperative Societies, Aurangabad.).. **RESPONDENTS**

APPEARANCE : Shri A.S. Deshmukh, Advocate for
Applicant.

: Shri N.U. Yadav, P.O. for respondent
Authorities.

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

Reserved on : **10.04.2023**

Pronounced on : **27.04.2023**

O R D E R
(Per : Shri Bijay Kumar, Member (A))

1. This Original Application No. 851 of 2016 has been filed by
one Shri Jagdish Balaram Pardeshi, r/o Aurangabad on

27.10.2016 by invoking provisions of Section 19 of the Administrative Tribunals Act, 1985, upon getting aggrieved by the appellate authority not deciding his appeal against the punishment order inflicted upon him by respondent no. 1 vide order dated 10.10.2014 on the basis of a departmental enquiry conducted against him under rule 8 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979.

2. The applicant had also filed a miscellaneous application No. 135 of 2017 in O.A. No. 851 of 2016 on 03.04.2017 for grant of leave to insert paragraph No. 6 (xxi), 7 (I) (A), (B) 7 (C) and 12 (I-A) in order to incorporate subsequent developments, which was allowed by oral order passed by this Tribunal on 03.05.2017. The subsequent development included rejection of appeal filed by the applicant against the impugned punishment order dated 10.10.2014 by the appellate authority by order dated 17.01.2017. Amendment to the O.A. was carried out on 04.05.2017.

3. Background Facts in Brief:-

(i) It is undisputed that the applicant entered into service of the State Government on the post of Junior Clerk in the Department of Cooperation. He was initially

appointed as 'Open' category candidate. The applicant got a caste certificate of Vimukt Jati (in short, **VJ**) by claiming to belong to Rajput (Bhamta) caste. The applicant claimed benefits of reservation in promotion to the posts of Senior Clerk, Co-Operative Officer, Grade-II, Co-Operative Officer, Grade-I and Assistant Registrar of Co-Operative in the years of 1983, 1987, 1991 and 2005 respectively. However, his caste certificate was declared as invalid by the *caste certification verification committee* by its decision No. विसकअओ/ जाप्रप/ निर्णय/ जीबीप/०४-०५/७०१५/ओरंगाबाद; dated- 14.07.2004.

(ii) Applicant has alleged in item at serial No. 10 of the Synopsis of this O.A. that with apparent reason for respondents not to release his regular pension & pensionary benefits that the respondents issued a Memorandum of Charge on 20.11.2008 to him for initiating a Departmental Enquiry against him under rule 8 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. Departmental enquiry officer submitted enquiry report on 25.09.2012 which was served on the applicant on which reply was submitted by the applicant on 15.11.2012.

Applicant's say was called for vide a letter issued on 10.10.2013 on the point of proposed penalty, response to which was submitted by the applicant on 03.12.2013. The respondent No. 1 passed order dated 10.10.14 thereby, imposing punishment on the applicant in this O.A. (delinquent in the D.E.). The applicant filed appeal against the punishment order before His Excellency the Governor of Maharashtra State on 24.11.2014 which has been dismissed by the appellate authority vide order dated 17.01.2017.

(iii) It is during the period of long pendency of the appeal that the applicant had filed the present O.A. on 27.10.2016 and subsequently amended the same incorporating the decision of the appellate authority on the appeal filed by him against the punishment imposed by the Disciplinary Authority.

4. Relief Prayed for: The applicant has prayed for relief in terms of para 12 (A), 12 (1-A), 12 (B), 12 (C) and 12 (D) which are being reproduced verbatim for ready reference as below :-

"12. THE APPLICANT, THEREFORE, PRAYS THAT,

A) This Original Application may kindly be allowed thereby quashing and setting aside the impugned

order dated 10.10.2014 (Annex. A-7) issued by the resp. No. 1.

- 1-A) This Original Application may kindly be allowed thereby quashing & setting aside the impugned order dtd. 17.01.2017 (Annex. A-13) passed by the Appellate Authority dismissing the appeal filed by applicant against the order dtd. 10.10.2014.*
- B) This Original Application may kindly be allowed thereby further directing the Respondents to extend to the applicant all his pension and pensionary benefits to which he could be entitled in view of quashment of order dated 10.10.2014 (Annex. A-7) of Resp. No. 1.*
- C) Costs of this Original Application may kindly be awarded to the applicants.*
- D) Any other appropriate relief as may be deemed fit by this Hon'ble Tribunal may kindly be granted."*

5. Grounds for Seeking Relief:- The applicant has stated grounds for seeking relief as per prayer clause, which may be put into four distinct categories as follows :-

- (a) Failure on part of the applicant to establish his caste claim before the Caste Certificate Scrutiny Committee, by no stretch of imagination be termed as a 'misconduct' as defined under Maharashtra Civil Services (Conduct) Rules, 1979 (please refer to para (7) (X) of the O.A. on page no. 19 of the paper-book)
- (b) Departmental proceedings from the stage of initiation up to the stage of passing of punishment order has been

void and illegal, (*refer to para no. (7) (I) to (7) (VII) and para (7) (VIII) of the O.A. on page no. 16 to 18 of the paper-book.*).

(c) Proceedings of hearing and deciding appeal filed by the applicant against the punishment order has been void and illegal (*refer to para (7-I-A) to para (7-I-C) of the O.A. on page no. 18 of the paper-book*)

(d) The applicant would have got first three promotions instead of four promotions he actually received, even if he had been treated as a candidate from 'Open Category' (*please refer to para (7) (IX) of the OA on page no. 19 of paper-book*).

6. Chronology of making pleadings and Final Hearing:- The learned Presenting Officer filed affidavit in reply to the Original Application on behalf of all the three respondents on 18.07.2017 which was taken on record and a copy thereof served on the applicant. The matter was then fixed for hearing on admission. After hearing the two sides on 27.09.2017 the O.A. was admitted and as this Tribunal came to conclusion that an arguable case was made out, therefore, with consent of the two sides, decided vide oral order dated 27.09.2017 to take up the matter for final hearing as and when Division Bench is available. The final

hearing took place on 10.04.2023 after which the matter was reserved for order.

7. Analysis of Facts and Grounds for Seeking Relief:- Four grounds for seeking relief as mentioned in foregoing para no. (5) of this order are being analyzed in the light of provisions of rules cited by the applicant, including the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 read with case-laws as follows:-

(a) Failure on part of the applicant to establish his caste claim before the Caste Certificate Scrutiny Committee, by no stretch of imagination be termed as a 'misconduct' as defined under rule (3) of the Maharashtra Civil Services (Conduct) Rules, 1979:-

Analysis- Analysis of this item of defence is as follows:-

(i) In this context, first of all we quote relevant components of act of omission and commission which constitute 'Misconduct' under rule (3)(1) of Maharashtra Civil Services (Conduct) Rules, 1979, as follows :-

"3 (1). *Every Government servant shall at all times-*

(i) maintain absolute integrity,

(ii) maintain devotion to duty

(iii) do nothing which is unbecoming of a government servant,

(vi) maintain high ethical standards and honesty,

(xviii). refrain from doing anything which is or, may be contrary to any law, rules, regulations and established practices.

3 (3) (i) No government servant shall, in performance of his official duties, or in exercise of powers conferred upon him, act otherwise than in his own best judgment to be true and correct except when he is acting under the direction of his official superior.”

(ii) The applicant has pleaded innocence on the ground that his failure to produce decade old documents to prove his caste as 'Rajput Bhamata' cannot, by any stretch of imagination, be termed as 'Misconduct' under definition of 'Misconduct' under rule (3) of Maharashtra Civil Services (Conduct) Rules, 1979. But, from information on record as tabulated below in TABLE- I, it is obvious that the applicant had failed to inform respondent no. 3 of facts in this regard and tried to get voluntary retirement approved to get scot free of responsibility of having secured service benefits on the basis of an invalid caste certificate. Thus, the applicant has not

only deprived a bonafide employee from getting the benefit of scheme of reservation in promotion, but this act on part of the applicant had also dented and defeated the very objective of the scheme in its application in his department.

TABLE-I

S. No.	Date	Event
1	29.11.1974	Appointment as Junior Clerk as 'Open Category' candidate
2	23.01.1980	Submitted caste certificate of VJ Category
3	21.07.1983	Promotion as Senior Clerk under VJ category reservation
4	26.06.1987	Promoted as Co-operative officer, Grade-II/ Head Clerk under VJ category reservation
5	13.03.1991	Promoted as Co-operative Officer, Grade-I under VJ category reservation
6	14.07.2004	Invalidation of caste certificate by caste certificate verification committee
7	11.10.2004	Applicant informed respondent no. 3 on being asked by letter dated 04.10.2004 that caste verification report has been challenged by W.P. No. 6621/2004 on 30.09.2004.
8	26.10.2004	The W.P. was rejected on 26.10.2004
9	21.12.2004	Asked by respondent no. 3 by letter dated 21.12.2004 about status of W.P. No. 6621/2004 but no reply was submitted by the applicant till 19.11.2008
10	13.12.2004	Promoted as Assistant Director, co-operative Societies

11	08.08.2008	Issue of Notice for VRS by applicant
12	20.11.2008	Issue of Memorandum of Charges
13	31.07.2010	Date of Retirement by Superannuation

INFERENCE- In our considered opinion, there is no merit in this argument of the applicant that his alleged acts of omission and commission in the present matter do not constitute “Misconduct” under provisions of rule 3 of the Maharashtra Civil Services (Conduct) Rules, 1979, as the applicant has not only avoided furnishing correct information about invalidity of his caste certificate and dismissal of Writ Petition filed by him, but tried to get VRS in the meantime.

(b) Departmental proceedings from the stage of initiation up to the stage of passing of punishment order has been void and illegal :-

Analysis- The applicant advanced multiple grounds to buttress his claim that the departmental enquiry proceedings has been void and illegal analysis of the same is as follows :-

(i) Initiation of departmental enquiry on the basis of two memorandums of charges dated 20.11.2008 and 21.09.2009 is ab initio illegal.

(ii) Respondent No. 2 not being the appointing authority of the applicant in Class II/ Group B service cadre of Assistant Registrar of co-operative societies, he had no power and authority in law to initiate DE under rule 8 of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 for imposition of major penalty upon the applicant.

(iii) Respondent No. 1 has failed to comply with the statutory requirement under rule (2-A) of rule 9 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979, of recording his own findings in relation to the charges against the applicant.

(iv) Enquiry Officer had not recorded any findings in relation to three charges levelled against the applicant vide memorandum of charges dated, 20.11.2008 and therefore, respondent no. 1 has erred in imposing penalty of withdrawal of full pension of the applicant vide the impugned order dated 10.10.2014.

(v) The two charges levelled against the applicant vide memorandum of charges dated 21.02.2009 could at the most, be termed as the statement of things that had happened and cannot be termed as misconduct.

(vi) The departmental Enquiry has not been conducted as per rule 8 and 9 of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979.

(II) On perusal of Memorandum of Charges dated 20.11.2008 and 21.02.2009, it has been clarified by respondent No. 2 that second memorandum has been issued based on additional acts of misconduct which came to notice of respondent No. 2 and which are integral part of the first Memorandum issued on 20.11.2008; the second one includes the modus operandi of getting caste certificate. The background facts on record in this regard are that the applicant had submitted copies of three documents for getting caste certificate of Rajput Bhamata. The first document submitted by the applicant was a translated version of a copy of Record of Rights over a piece of agricultural land which was in the form of 7/12 extract and pertained to period of 1342 Fasali. On the copy of the said 7/12 extract, land owner's name is mentioned as Shri Balasaheb Kashiram Pardeshi, and the applicant claimed the owner of land as his father. However, during enquiry by caste certificate verification committee, it came out that the system of 7/12 extract in revenue records was introduced during the subsequent period and therefore, the document submitted by the applicant was declared to be a fabricated one. The second document which was submitted by the applicant was caste verification reports for one, Kumari Shilpa Diwakar Rajput and another, Shri Sachin Diwakar Rajput which had been issued in the year 1991, applicant claiming the two as his blood relatives. The third document submitted by the applicant was an affidavit sworn by Shi Diwakar Bhika Rajput to the effect that the applicant and Shri Diwakar Bhika Rajput were blood relation. Upon

enquiry conducted by the caste certificate verification committee, it came out that the applicant was not in blood relation with Shri Diwakar Bhika Rajput or with Kumari Shilpa Diwakar Rajput and Sri Sachin Diwakar Rajput. Incorporating additional acts of misconduct by issuing second memorandum of charges in addition to the first one, in our considered opinion, does not, in any manner vitiate the Departmental Enquiry conducted against the applicant.

(III) The applicant has raised the point of competence of respondent no. 2 to institute departmental enquiry under rule 8 of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979- The applicant has contended that the respondent no. 2 being only Head of the Department and not the Appointing Authority, he is not competent to institute enquiry under rule 8 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. In this respect, the applicant has relied on provisions of rule 6 (2), third Proviso read with rule (7) (2) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979, which are being quoted below for ready reference :-

“Rule (6) (2), 3rd Proviso- “ Provided also that, the Head of Department shall exercise the powers of imposing minor penalties only in relation to Government servants of State service Group A under their respective administrative control who draw pay in a scale, minimum of which does not exceed Rs 10650.”

“Rule (7) (2) – A disciplinary authority competent under these rules to impose any of the penalties specified in Rule 5 may institute disciplinary proceedings against any Government servant on whom the disciplinary

authority is competent to impose any of the penalties specified in Rule 5”

(IV) Above mentioned contentions have been examined for which reference is drawn to provisions of rule 8, sub-rule 23 of the Maharashtra Civil Services (Discipline & Appeal) Rules 1979, which is quoted below for ready reference :-

“8(23)(a) Where a disciplinary authority competent to impose any of the minor penalties but not competent to impose any major penalties has himself inquired into or caused to be inquired into any of the articles of charges and that authority, having regard to its own findings or having regard to its decision on any of the findings of any inquiring authority appointed by it is of the opinion that any major penalties should be imposed on the Government servant, that authority shall forward the record of the inquiry to such disciplinary authority as is competent to impose such major penalty.

(b) The disciplinary authority to which the records are so forwarded may act on the evidence on record or may, if it is of the opinion that further examination of any of the witnesses is necessary in the interest of justice, recall the witnesses and examine, cross-examine and re-examine the witnesses, and may impose on the Government servant such penalty as it may be deem fit in accordance with these rules:

Provided that if any witnesses are recalled, they may be cross examined by or on behalf of the Government servant.”

(V) As the respondent No. 2 has obtained sanction of respondent No. 1 for continuing the departmental enquiry under rule 27 of Maharashtra Civil Services (Pension) Rules, 1982 and also submitted enquiry report and other related documents to respondent No. 1 for getting orders in

respect of punishment to be imposed, in our considered opinion, there is no lacuna in respect of competence of respondent No. 2.

(VI) The applicant has also contended that the departmental enquiry against him has not been conducted as per provisions of rule 8 and rule 9 of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. However, he has not substantiated this contention by citing any evidence with reference to the cited rules.

INFERENCE- This contention of the applicant, in our considered opinion is devoid of merit.

(c) Proceedings of hearing and deciding appeal filed by the applicant against the punishment has been void and illegal :- The applicant has contended in para 7 (I-A) to 7 (I-C) of the amended O.A. that the appellate authority had clearly and totally failed to consider any of the points raised by him in his appeal and the said authority simply dismissed the appeal in a mechanical manner without application of mind to various contentions raised by the applicant.

Analysis :- The applicant has claimed innocence in submitting a caste certificate for claiming benefits of reservation in promotion when the department was preparing select list for promotion from the post of Junior Clerk to Senior Clerk. In the appeal filed by the applicant, he has admitted the fact of submission of caste certificate, which came out to be invalid and availed the benefits

thereof, before verification of the same by Caste Certificate Verification Committee. He has pleaded innocence by stating that he could not produce age old documents in support of his caste claim and therefore, he failed to get validity certificate for his caste certificate. The applicant has also pleaded that he has been prepared to refund the monetary benefit gained by him from the 4th promotion as employees from 'Open Category' got three promotions. The applicant has also prayed for release of his pension and other post-retirement benefits taking into account his unblemished service of 37 years. It is noticed that the applicant does not seem to be repentant for his misconduct; instead continues to blame the Disciplinary Authority for taking action of departmental enquiry upon receiving notice for VRS filed by the applicant. In our considered opinion, the appellate authority has decided the appeal based on facts on record and after getting additional information and passed a speaking order which was communicated to the applicant vide letter no. राजस २०१५/प्र.क्र. २७०/५-स, सहकार, पणन व वस्त्रोद्योग विभाग, मंत्रालय, मुंबई-३२, Dated 17.11. 2017.

Inference :- In our considered opinion, the appellate authority has rightly not commented on statements / part of memorandum of appeal containing allegations made by the appellant against the respondent authorities which are of the nature of afterthought. The order passed by the appellate authority is speaking one on all material issues

raised by the applicant, therefore, there is no merit in this ground advanced by the applicant in the present O.A.

(d) The applicant would have got first three promotions instead of four promotions he actually raised, even if he had been treated as a candidate from 'Open Category'- The applicant has contended that he did not get any substantial financial gains by securing one additional promotion which he got on the strength of invalid caste certificate and appropriate punishment would have been to recover from him extra financial gains made by him by 4th promotion.

Analysis- Applicant has not only availed promotion against quota for VJ employees but has also deprived other eligible employees from getting the benefit of the scheme of reservation in promotion. Thereafter, the applicant has attempted to conceal the outcome of Writ Petition No. 6621/2014 and to get VRS sanctioned in order to get scot free from departmental action. He continues to blame the disciplinary authority for acting in revenge after the applicant submitted application for grant of VRS. Therefore, in our considered opinion, the acts of commission and omissions on part of the applicant in the present O.A. has been rightly decided by respondent No. 1 to be of grave nature. In view of aforesaid analysis, the contention of the applicant does not hold water.

INFERENCE- On the basis of analysis of facts on record and oral submissions made, in our considered opinion, there is no merit in the above contention of the applicant.

8. Conclusions:- Based on above analysis of facts on record, in our considered opinion, the applicant has not only committed grave misconduct but is also non-repentant. He has not been able to substantiate any of his contentions still making unsubstantiated allegations against respondents of being vindictive for reason of applicant having given notice of voluntary retirement. Therefore, the Original Application is misconceived and devoid of merit, hence the following order :-

ORDER

- (A) Original Application No. 851 of 2016 is dismissed for being devoid of merit.
- (B) No order as to costs.

MEMBER (A)
Kpb/D.B. O.A. No. 851/2016 Major Punishment

MEMBER (J)